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Supreme Court U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES.

SHOLA ABE, PETITIONER
v
MICHIGAN STATE UNIVERSITY / RESPONDENT

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_____/

PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI. TO THE STATE OF MICHIGAN COURT OF APPEALS.

PETITION FOR A WRIT OF CERTIORARI

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QUESTION FOR REVIEW.

QUESTION:

DID THE STATE COURT(S) VIOLATE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL DUE PROCESS RIGHTS AND INJURED PETITIONER WHEN IT DID NOT COMPLY WITH AND/OR COMPEL COMPLIANCE WITH STATE'S RECUSAL RULES, MCR 2.003, BUT INSTEAD, IN AN ACT OF EVASION, LEAP-FROGGED THAT RULE TO DECIDE PETITIONER'S ORIGINAL INDEPENDENT ACTION COMPLAINT OF RESPONDENT / COUNSEL'S FRAUD NOT BEFORE THE JUDGE UNTIL AFTER AND UNLESS THE JUDGE HAS COMPLIED WITH STATE'S RECUSAL RULES BY DECIDING PETITIONER'S MOTION TO DISQUALIFY CONCERNED JUDGE FIRST.

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CORPORATE DISCLOSURE STATEMENT.

Petitioner and respondent are not corporations.

INDEX OF AUTHORITIES.

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1. Crampton v Dep't of State, 395 Mich 347; 235 NW2d 352 (1975). 23, 43.

2. Fieger v Ferry 471 F. 3d 637 (6th Cir. 2006). 45.

3. Shelley v Kraemer, 68 S. Ct. 836, 334 U.S. 1, 92 L. Ed. 1161, A.L.R. 2d 441. 33.

4. U.S. v Jordan, 49 F. 3d 152, 156 (5th Cir.1995). 16.

COURT RULE(S) INVOLVED:

STATE OF MICHIGAN RECUSAL RULE MCR 2.003. Disqualification of judge or judges.

OPINION BELOW.

The State's Appellate Court, Supreme Court and Circuit Court Orders are hereby appended. The orders of the courts were not accompanied by any statement on the record of the rationale supporting the courts failure to comply with and/or compel compliance with the state's Recusal Rule MCR 2.003 but to instead leap-frogged rule to prematurely decide issue of fraud not before the courts **until after** the state's Recusal Rule motion has been decided.

JURISDICTION.

The day on which the State Court of Appeals decided my case was June 16, 2008. A timely motion for reconsideration was denied on July 17, 2008.
A timely Application for leave to appeal to the Michigan Supreme Court was denied on December 10,

2008.

The jurisdiction of the court is invoked under 28 U.S.A., sec. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Equal protection of the laws Due Process Clause of the Fourteenth Amendment to the United States Constitution, Article 14, section 1.

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Due process clause of the Fifth Amendment to United States Constitution, which in pertinent part provides:

No person shall be deprived of life, liberty, or property, without the due process of law.

STATEMENT OF THE CASE.

1. On December 4, 2006, petitioner filed an MCR 2.003, 2.003 (A)(B)(C) motion to disqualify Honorable Manderfield and/or for Honorable Manderfield to recuse herself from hearing petitioner's original independent action complaint of respondent's fraud under MCR 2.112 (B)(E)(F) never filed in that court before, Case NO 06-1536-NZ filed on the same date of motion and subsequent addendums and corrections to complaint.

See Appendix E, P. 127, last sentence. Subsequent requests that the Court decide motion to disqualify judge and/or for judge to recuse herself from deciding

case were ignored.

2. THE STATE CIRCUIT COURT DID NOT COMPLY WITH COURT RULE TO DISQUALIFY HER AND/OR TO RECUSE HERSELF BY FAILING TO DECIDE PETITIONER'S MCR 2.003 MOTION TO DISQUALIFY HER OR FOR HER TO RECUSE HERSELF AS MANDATED BY RULE. The Court **leap-frogged the State Recusal Rule** to issue a Bench Order on May 30, 2007, entered in her order of June 20, 2007 **without deciding** motion to disqualify judge first.

3. Appellant timely filed with the court motion for reconsideration of its order of May 30, 2007 as entered on its order of June 20, 2007, respectfully asked the court to annul her order and decide motion to disqualify her. **COURT DID NOT DECIDE MOTION TO RECONSIDER.**

4. Appellant timely sought leave to appeal before the Court of Appeals regarding the above, after the Court did not decide motions, rather than wait and run out of the 12 month deadline to file an application for leave to appeal.

5. The Court of Appeals denied leave on June 16, 2008.

6. Appellant filed timely motion for reconsideration **en banc** with the Court of Appeals on June 30, 2008.

7. The Court of Appeals denied motion to reconsider or reconsider en banc on July 17, 2008.

8. The State Supreme Court denied Leave to Appeal on December 10, 2008.

Respectfully, Petitioner seeks a writ of Certiorari to appeal the Court of Appeals Order of June 16, 2008 regarding the failure of the State's

Circuit Court to comply with and failure of the Court of Appeals to compel the Circuit Court to comply with the State's Recusal Rule, the State's Supreme Court Order of December 10, 2008 for failure to compel the lower courts compliance with its recusal rules, its barring petitioner access to the court, its failure to disqualify the Circuit Court Judge and failure to appoint a neutral and impartial judge to hear petitioner's original independent action complaint of fraud on the part of defendant / defense Counsel on merit, the Circuit Court's Order of May 30, 2007 as entered on June June 20, 2007 after failing to comply with state recusal rule by evading compliance with rule, leap-frogging over rule to prematurely issue orders on case of fraud **not before it until after** the court has decided petitioner's motion to disqualify Honorable Manderfield. See Court Orders appended.

REASONS FOR GRANTING THE WRIT.

1. Petitioner **did not,** and fears cannot, and will not receive a fair and impartial hearing at the State Court without a fair, impartial and independent tribunal to hear his case on merit. See petitioner's **Appendix H**, page 149. Petitioner's letter of concern to the Circuit Court Clerk, also served on respondent's Counsel. The Conducts of the State Courts denied petitioner **meaningful** access to the courts.

Honorable Manderfield had no and has no jurisdiction over case No 06-1536-NZ **until and unless** she complies with and decide petitioner's State MCR 2.003 Recusal motion **first. She had no and has no discretion as to whether to comply with recusal rule or not.**

She had and has, owed and owes petitioner a judicial

duty to decide his motion to disqualify her and motion to reconsider. Honorable Manderfield did not fulfill both duties to petitioner.

Honorable Manderfield had and has a conflict of interests in deciding case No 06-1536-NZ, because her husband, Dr. David Murphy Gilstrap, who could have been and who could be called to testify as to his wife's relationship with respondent is an employee of the respondent as a faculty member in one of respondent's colleges. He was at one time a doctoral student at one of respondent's school where he eventually got his doctoral degree.

Honorable Manderfield is an alumni of one of respondent's colleges. Honorable Manderfield and her husband has an endowment in both their names at one of respondent's colleges.

Honorable Manderfield was/is **personally**

biased and prejudiced against petitioner because of petitioner's race and nationality.

Honorable Manderfield retaliated and would retaliate against petitioner, because petitioner filed a complaint against the judge before the Judicial Tenure Commission because of her personal bias and prejudice against petitioner in the conduct of the prior case between the two parties before judge.

The above are other issues that clouded and will cloud Honorable Manderfield's judgment regarding petitioner and petitioner's case in the State Court. See: **Appendix E,** page 87-123.

She acted and acts, would act to protect the interests of respondent with her judicial actions, not as a neutral arbiter, while respondent protects hers, her husband's and family's interests in a reciprocal relationship.

The State Court injured petitioner when it failed to comply with nor compelled compliance with the State's Recusal Rule, MCR 2.003, and prematurely decided petitioner's original independent action complaint of fraud against respondent **without first** deciding petitioner's MCR 2.003 motion to disqualify Judge and/or for Judge to recuse herself from hearing petitioner's complaint because of the judge's conflict of interests, **personal bias and prejudice** against petitioner. Petitioner's injury by the State would not have occurred if the State Court have complied with and/or compelled compliance with the State's Recusal Rule as required, by deciding petitioner's motion to recuse first.

The Court denied petitioner the constitutional equal protection due process of the laws rights under the Due Process Clause of the Fifth and Fourteenth

Amendments to the United States Constitution by its conduct.

Failure of the State Court to comply with State's Recusal Rules and failure to decide petitioner's motion for reconsideration impaired the current case, **injured** petitioner, and could impair future personal access to the type of fair and impartial tribunal secured under the Due Process clause, being an **unrepresented** litigant not on equal footing with respondent in the courts, and needing a fair, unimpeded, and **meaningful** access to the courts before a fair and impartial tribunal to challenge any adversary and to secure impartial adjudication on merits in order to protect my own interests and rights.

Petitioner had and has constitutional due process rights and entitled to a fair hearing on both the recusal motion and his original independent action

complaint on merit before a fair, impartial and independent tribunal in order to protect his own rights and interests, again, being an unrepresented litigant without the money to influence and/or buy justice, and so at a disadvantage to the institutional respondent with the resources, its court lobbyists to use those resources, and the tentacles of its power and influence reaching deep into the judicial system. The process at the state court was **arbitrary and capricious, a sham.** Case fixed.

The State's Court of Appeals and Supreme Court did not compel the Circuit Court to comply with and decide petitioner's State's Recusal rule motion as they should have done injuring petitioner with their failure to compel compliance.

The State's Supreme Court did not appoint a new and impartial and neutral judge or tribunal to

hear petitioner's motions and complaints on merit as it should have done, injuring petitioner with this failure.

The situation at the State Court is that the entire court system as in this case failed. It **failed to comply and failed to compel compliance** with the State Recusal Rule, **injuring** petitioner with those failures. Respectfully, this is a constitutional due process issue that the Honorable Court should decide.

2. Hearing of legal complaints before fair and impartial judges and/or tribunals is crucial to the integrity of the judicial system as a whole and the outcomes it generates in the State of Michigan and throughout the country.

Public news about **caught** corrupt court staff, most importantly corrupt judges whose decisions and judgments are being bought and paid for by parties to cases are not reassuring.

Lack of compliance and/or compulsion of compliance with the individual state recusal rule and/or federal recusal rule stands to injure many litigants in this state and throughout the country in the future if the non compliance and/or non compulsion of compliance at the state court(s) is/are not corrected by this Honorable Court. Non compliance and non compulsion of compliance with court rule(s) like in the present case, would most likely result into judicial abuse of litigants in the hands of unfair, biased and prejudicial judges and/or tribunals throughout the state and country, dealing out injustices without the due process of law, just because they are in a position to do so and allowed to do so by the superior judicial institutions of that state without being made to comply with court rules and/or not being made accountable for such unjust and

discriminatory conducts, and consequently further erode public's confidence in the **impartiality** of judges and the proceedings over which they preside. See: *U.S. v Jordan,* 49 F. 3d 152, 156 (5th Cir. 1995)..

Therefore, it is a highly desirable reason for this Honorable Court to grant writ and/or correct the non compliance and non compulsion of compliance with the State of Michigan Recusal Rule(s), and/or in lieu of granting writ, remand case back to the state courts with instructions to redress these issues and the injuries they have caused petitioner.

SUMMARY OF ARGUMENT

Petitioner had and has a right to and the Court owed and owes petitioner a duty to have his MCR 2.003 motion to disqualify Honorable Manderfield and/or for her to recuse herself from hearing

petitioner's original independent action complaint DECIDED FIRST before **any** action on complaint. Complaint was/is outside the reach of Honorable Manderfield **until after** petitioner's motion to disqualify her has been decided.

Petitioner had and has a right to and the Court owed and owes petitioner a duty to have his motion to reconsider decided by the Court.

The Court failed its duty to petitioner by FAILING TO DECIDE petitioner's Recusal motion.

Then Honorable Manderfield prematurely decided petitioner's original independent action complaint never filed in that court before **without deciding** motion to disqualify her and subsequently failed its duty to petitioner by failing to decide petitioner's motion for reconsideration. The Court failed its duty to petitioner by failing to compel compliance with the

recusal rule.

The Court violated petitioner's constitutional due process rights, rendering State Court orders regarding case No 06-1536-NZ invalid.

The Court injured petitioner.

ARGUMENT.

DISQUALIFICATION OF JUDGE: MCR 2.003, 2.003 (A)(B)(C)(3)(a).(RECUSAL RULE). - SIGNIFICANT COURT RULE. See: **Appendix E,** Page. 87-123.

Michigan Court Rule MCR 2.003 governs the disqualification of judges in civil proceedings, providing in pertinent part as follows:

(A) Who may raise. A party may raise the issue of judge's disqualification when the judge cannot impartially hear a case, including but not limited to instances in which:

(1) The judge is personally biased or prejudiced for or against a party or attorney.

(C) Procedure.

(3) Ruling. "The challenged judge **shall** decide the motion. If the challenged judge denies the motion,

(a) in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo.

(b) in a single-judge court, or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

QUESTION:

DID THE STATE COURT(S) VIOLATE

PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL DUE PROCESS RIGHTS AND INJURED PETITIONER WHEN IT DID NOT COMPLY WITH AND/OR COMPEL COMPLIANCE WITH STATE'S RECUSAL RULES, MCR 2.003, BUT INSTEAD, IN AN ACT OF EVASION, LEAP-FROGGED THAT RULE TO DECIDE PETITIONER'S ORIGINAL INDEPENDENT ACTION COMPLAINT OF RESPONDENT / COUNSEL'S FRAUD NOT BEFORE THE JUDGE UNTIL AFTER AND UNLESS THE JUDGE HAS COMPLIED WITH STATE'S RECUSAL RULES BY DECIDING PETITIONER'S MOTION TO DISQUALIFY CONCERNED JUDGE FIRST.

Petitioner answers YES.

Defense Counsel has not answered.

The State Circuit Court did not answer, did not decide recusal motion.

The State Court of Appeals did not answer. Did not compel compliance with rule.

The State Supreme Court did not answer, did not compel compliance with rule nor appointed another judge to hear case on merit.

STANDARD OF REVIEW:CLEARLY ERRONEOUS. CAPRICIOUS, FUNDAMENTAL AND PREJUDICIAL ERROR, ABUSE OF POSITION AND POWER.

Respectfully, the Court of Appeals Order of June 16, 2008 was/is clearly erroneous and evasive.

Respectfully the State of Michigan Supreme Court Order of December 10, 2008 was clearly erroneous, evasive and use of discretion was/is oppressive. Order was/is unjustified.

The state Circuit Court Order of May 30, 2007 as entered on June 20, 2007 was clearly erroneous, evasive, with fundamental and prejudicial errors. The Court abused its position and power with its conducts and orders.

- **There was no and there is no truth to respondent / respondent Counsel's claims**

before the Courts.

There was no and there is no truth to the claims in the State Courts Orders regarding Case No. 06-1536-NZ.

The generic claims, catch all words, may be code words, and/or statements of respondent and in the Courts Orders, i.e. frivolous and vexatious, are patented guises used to evade and/or hide from the truth of petitioner's case.

It is like a child covering his face with his hands thinking that he his hiding and can not been seen, except that the child is in plain view for all to see.

Respondent and state Courts are trying to hide behind words, while their actions and conducts on record betrays their characters and real selves.

Respectfully, the Honorable Supreme Court of the United States should see through the façade and guises of the State Courts and reject them.

Petitioner requested that if the Judge were to deny recusal motion, to refer motion to the Chief Judge. She did not decide motion nor referred motion to the chief Judge. She did not comply with Court rule. To reach the substantive issue(s) in petitioner's complaint and/or to secure adjudication of claim of fraud on the merit, **the court must first comply** with the state's recusal rule. And when the court did not comply with rule, it should have been compelled to comply by the Superior Courts. **These did not happen in this case.** *See Crampton v Dep't of State,* 395 Mich 347; 235 NW 2d 352 (1975).

Further, the Court failed to decide petitioner's timely

motion to reconsider its Order of May 30, 2007 as entered in its Order of June 20, 2007, meaning that the process at the Circuit Court was not and is not concluded.

The Court had and has a judicial duty to decide both recusal motion and motion to reconsider, either to grant or deny motions.

THE STATE'S CIRCUIT COURT HAD NO AND HAS NO DISCRETION WHETHER TO COMPLY OR NOT COMPLY WITH THE STATE'S RECUSAL RULE(S). The rule mandates all state courts below the Michigan Supreme Court to comply with rule. The Court had and has to comply with the State's Recusal Rules **first** before a hearing of petitioner's case of fraud can take place. Then after the challenge to the affected judge is resolved and the actual judge to hear case has been named, then

impartial hearing of case can begin **and during which time both parties can amend their presentations to the court if necessary.** Honorable Manderfield did not have jurisdiction of Case No. 06-1536-NZ **until after** motion to recuse has been decided, **and as a result**, and only **if** she has been named the judge to hear the case after that motion hearing. **The Court did not and does not have discretion whether to decide or not decide motion for reconsideration.** The only discretion of the court in this case was/is **whether to grant or deny** the motion(s) before it. The Court owed and owes petitioner a judicial duty to decide petitioner's motion to recuse and motion to reconsider. And for this to happen, the Court had and has to decide the motions before it, **as motion granted or motion denied.** Again this duty of the court to decide the

motions before it was/ is not discretionary but mandatory.

The Circuit Court did not comply with this rule by failing to decide motion to disqualify Honorable Manderfield and motion to reconsider. The Court denied petitioner the right to an unbiased hearing before an impartial tribunal. The Court of Appeals failed to compel compliance with recusal rules, both in violation of petitioner's Fifth and Fourteenth Amendment to the Equal Protection of the Laws due process rights.

The State Court injured petitioner by its failure to comply with the state's recusal rule, leap-frogging the Recusal rule to decide petitioner's complaint of respondent's injury to petitioner by its securing prior court orders in the prior case between the two parties through knowing fraud, intentional misrepresentation

of material facts and law and using false evidence to secure those orders. The State Court injured petitioner by its failure to decide petitioner's motion for reconsideration.

The State's Superior Courts injured petitioner for failure to compel the lower court to comply with recusal rule in order for fresh eyes to look at and unbiased mind(s) to consider petitioner's claim of fraud on merit. An exercise that the state courts knew and knows would have resulted into a different and favorable outcome in favor of petitioner. The Court's Order was discriminatory and oppressive.

The outcome of the Courts to NOT comply with and/or compel compliance with the recusal rule furthered and furthers defendant's fraud in obtaining court orders through fraudulent means, **with courts**

knowledge, fraud which has injured petitioner by knowingly and unjustly by such frauds deprived and denied petitioner completion of his professional education, the credentials and certificates I would have certainly obtained and owned by completion of education and other advance trainings, the financial income that would have been generated by the practice of my chosen profession with my education and credentials, other properties that with **certainty** petitioner would have owned, the higher social standing, stability and peace of mind and the other intangibles of life that flows from attaining that education that defendant knowingly fraudulently denied petitioner. Respondent knowingly unjustly denied petitioner these through knowing fraud, intentional misrepresentation of material facts and law and use of false evidence to secure court orders in

the prior case between the two parties. State Courts likewise have denied petitioner the above through the courts failure to comply with, and failure to compel personally biased and prejudiced judge to comply with recusal rule.

The Court's failure to not comply with State's Recusal rule, equally as defendant, **injured petitioner** by knowingly denying and depriving petitioner a bias free and impartial judicial environment to litigate the claim of fraud as the cause of original independent action between petitioner and respondent. And like respondent, consequently knowingly **unjustly** prejudicially denied petitioner his professional education, the certificates and credentials that petitioner would have **certainly** earned and owned by completion of education and other advanced training in profession that petitioner would have acquired, the

professional practice resulting from education, the financial income that would have been generated by the practice of profession, other properties that with **certainty** petitioner would have owned, the higher social standing, stability and peace of mind and the other intangibles of life that flows from attaining that education.

The Courts lack of compliance with the state recusal rules and failure to compel compliance with rule means that petitioner was knowingly wrongly deprived the right to a fair and impartial trial of petitioner's complaint of fraud by the respondent and defense Counsel. The Courts prejudicially knowingly denied petitioner his constitutional due process rights. The Courts knowingly injured petitioner. The Courts unjustly and prejudicially denied petitioner justice.

THE STATE'S COURT OF APPEALS.

See: Appendix D, page 68. Counsel **untimely,** page 86. Appendix E, P. 87-123. Petitioner's motion to disqualify the Circuit Court's Judge, Honorable Manderfield.

The June 16, 2008 discretionary decision of the Michigan Court of Appeals **was/is a direct result** of the non compliance of Honorable Manderfield with state's MCR 2.003 Recusal Rule by the judge's intentional failure to decide petitioner's motion to disqualify judge, and also a result of her failure to decide petitioner's timely motion to reconsider her premature order of May 30, 2007 as prematurely entered on June 20, 2007. The judge's failures came from the Court's maneuvers, a set-up by the court, intentionally designed to shape the outcome of petitioner's case.

The Court did this to intentionally force petitioner to have to ask the State's Court of Appeals for leave to appeal, to trigger the Court's power of discretion, knowing that the court would deny leave as she told petitioner on February 8, 2006 during an appearance before the judge.

The Court's action was with the purpose, intent, and the effect to knowingly deny petitioner his constitutional due process rights and justice, by using a combination of :

- intentional failure to decide petitioner's motion to disqualify honorable Manderfield,
- intentional failure to decide motion to reconsider
- and appellate discretion, to do just that.

This devious strategy and conduct by the state court was/is simply wrong. Respectfully, the Honorable

Supreme Court of the United States should reject such strategy, conduct and its outcome in this case.

To remind the Honorable Supreme Court of the United States, the State Circuit Court had no and has no discretion as to whether to decide or not decide motion to disqualify judge Manderfield. It had no and has no discretion as to whether to decide or not decide motion to reconsider. **The Court was/is duty bound** to decide these two petitioner's motions. If the court were to have fulfilled its judicial duty in this case, the State's Court of Appeals discretion would not have been triggered, because petitioner 's appeal to that court would have been of right. The Court injured petitioner with its devious conducts. See *Shelley v Kraemer,* 68 S. Ct. 836, (at 11), 334 U.S. 1, 92 L. Ed. 1161, A.L.R. 2d 441. Respectfully, the Honorable Court should redress this petitioner's

injury.

Respectfully, the Honorable Supreme Court of the United States of America should not allow the State Courts to use discretion, particularly in this case, discretion as manufactured by the State's Circuit Court by its intentional failure to decide motion to disqualify Honorable Manderfield and failure to decide timely motion to reconsider, as a guise to knowingly deny petitioner his constitutional rights to the due process of law and justice.

Petitioner had and has standing to motion the state court to disqualify personally biased and prejudiced judge and/or for judge to recuse herself from hearing petitioner's original independent action complaint of respondent's fraud filed for the first time at the Circuit Court. The court has the judicial duty to comply with the State's recusal rule. **Duty** of the

Court to comply with MCR 2.003 recusal rule was/is mandatory not discretionary. **Therefore,**

- **petitioner and his MCR 2.003 motion to disqualify personally biased and prejudiced judge and/or for judge to recuse herself from hearing his MCR 2.112 original independent action complaint of respondent's fraud according to state recusal rule was/is of merit.**
- **Failure of personally biased judge to comply with recusal rule as mandated, leap-frogging rule to evade compliance with rule and not decide case on merit was/is of merit.**
- **Petitioner's right to have his motion to recuse decided and decided by an impartial tribunal was/is of merit.**

- **Petitioner's challenge of personally biased and compromised judge with conflict of interests for personal gains, being that her husband who could have been called and could be called as a witness as to Honorable Manderfield's relationship with the respondent, was/is an employee of the respondent as a faculty member in one of respondent's colleges, a doctoral degree candidate at one of defendant's colleges,**
- **both Judge and husband with endowment at one of respondent's colleges in their names, and that defendant represents a good portion of the judge's political constituency which she depends on for all kinds of resources, especially money, in her ambition to be promoted to higher**

courts, including her unsuccessful bid for the open Court of Appeals seat in this last election cycle, plus other reasons stated on record in petitioner's motion to disqualify the judge was/is of merit. *See: APPENDIX E, plaintiff's motion to disqualify Judge. APPENDIX F, appellant's addendum to application for leave to appeal.* Also see P. 138, **APPENDIX G,** page 2, *People v Kwame Kilpatrick,* second paragraph, line 4, MCR 2.003(B)(6). **"... as MCR 2.003(B)(6) requires the recusal of a judge only when the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person... is to the judge's knowledge likely to be a witness in the proceeding." All**

contrary to the State Court of Appeals no merit Order of June 16, 2008. See page 19-21 above.

In this case, the Circuit Judge did not fulfil her judicial duty to comply with recusal rule and decide petitioner's motion to disqualify judge, harming petitioner in the process by leap-frogging over rule in order to knowingly evade compliance with that rule to decide an original independent action claim of fraud not before her until after motion to recuse has been decided. She did not decide petitioner's motion for reconsideration of her premature order of May 30, 2007 as entered on June 20, 2007, making her order invalid. Among other reasons for her failure to comply with MCR 2.003 recusal rule was/is, her conduct was/is a QUID PRO QUO reciprocal relationship with respondent. The respondent protects her interests,

including her husband's educational and professional interests, her own political and professional interests, and she reciprocated and reciprocates by judicially protecting the respondents interests with her judicial conducts and decisions regardless of respondent's fraud. See appendix F. (David Murphy Gilstrap, honorable Manderfield's husband, see page vi, last paragraph). Respectfully, the State of Michigan Court of Appeals injured petitioner with its order of June 16, 2008 by its failure to direct and/or order the Circuit Court to comply with the State's recusal rules. The Court should have appointed a new judge. See page **47-48** below. Respectfully, the State's Court of Appeals Order of June 16, 2008 was erroneous and should not be allowed to stand.

The State Court of Appeals on its Order of June 16, 2008, considered petitioner's Application for Leave

to Appeal before that Court to be delayed. After the Circuit entered its order on June 20, 2007, petitioner filed a timely motion to reconsider. Petitioner was waiting for the Court to decide motion to reconsider. It was after the court failed and/or refused to decide that motion to reconsider that petitioner filed his application for leave to appeal before the State Court of Appeals. That explains the delay as presented to the State Court of Appeals. That petitioner's motion to reconsider before Honorable Manderfield is still undecided as of this date.

THE STATE'S SUPREME COURT.

See: **Appendix F,** page 123-138. See argument above.

The State Supreme Court Order of December 10, 2008 issued as a deliberate hurdle and/or barrier to

knowingly impair and/or deprive petitioner the legal forum to protect his own interest currently and in the future in civil case(s) that his only option and/or prevailing circumstance in time would have dictated and or dictate would be to represent himself against any adversary.

The Court ordered to enforce the Circuit Court's order and judgment that should **NOT** have issued at all, because Honorable Manderfield, a personally biased judge, with conflict of interests, failed her judicial duty to decide petitioner's MCR 2.003 **recusal motion that comes before** deciding petitioner's complaint, and so did not comply with the State's Recusal Rule to disqualify her or for her to recuse herself from deciding petitioner's case of fraud on the part of respondent / respondent's Counsel as she should have done, and consequently making her order

and judgment of May 30, 2007 as entered on June 20, 2007 invalid, and therefore, respectfully, making the December 10, 2008 order of the Michigan Supreme Court unfair, inappropriate, oppressive and unjustified. Instead of the Court enforcing Honorable Manderfield's invalid order, the Honorable Court should have compelled her to comply with the State's recusal rules and decide motion to disqualify her or for her to recuse herself as petitioner put before the Court.

Respectfully, the order of the Michigan Supreme Court was/is inconsistent, discriminatory, unjustified and oppressive. It rewards respondent for being frivolous and fraudulent and wrongly approves and encourages Honorable Manderfield's non compliance with the state's recusal rule. The order impairs petitioner's legal rights now and in the future, violated and

violates petitioner's constitutional and civil rights to the courts and to justice. Respectfully, the order should not be allowed to stand.

Respectfully, the state Supreme Court denial of petitioner leave to appeal **does not devoid** the Court of the responsibility for the State's Recusal rule that it promulgated, and for the enforcement of compliance with that rule.

The State Superior Court as the State Court of last resort is responsible for enforcing compliance with rule by the State's lower courts. The State Supreme Court should not be allowed to use discretion to enforce or not enforce a rule that it promulgated and mandates the lower courts to comply with. This would be using discretion to knowingly deny litigant his constitutional equal protection of laws due process rights and justice. The Court's use of discretion not to enforce its rule as

mandated to be complied with by the language of the rule is inconsistent, contradictory and in conflict with the Court's action in the case of *Crampton v Dep't of State,* 395 Mich. 347; 235 NW 2d 352 (1975). It is a pretext to discriminate against petitioner and deny him due justice by denying him his constitutional equal protection of the laws due process rights. It was/is an act of evasion in order to knowingly deny petitioner justice. The Honorable Court injured petitioner by failing to compel compliance with the state's recusal rule and by failing to appoint a neutral and impartial judge to hear petitioner's case of fraud on merit. The injury to petitioner through the State's Supreme Court duplicates and **compounds** petitioner's injury from the hands of the defendant, the Circuit Court and the Court of Appeals.

Respectfully, in this case, the Michigan

Supreme Court abdicated the responsibility to compel compliance with its own rule. By design and/or by default, it shifts the responsibility to enforce compliance with that rule to the United States Supreme Court. And therefore, petitioner respectfully ask the Honorable Court to compel the State Court(s) to comply with the state's recusal rule.

In *Fieger v Ferry 471 F. 3d 637 (6th Cir. 2006)*, the Michigan Supreme Court Justices claimed exception from the State's Recusal Rules according to the interpretation of rule and so did not recuse themselves from hearing that case.

Relating to that case, the Michigan Supreme Court decided the recusal motion involved. Denied motion.

In petitioner's case, the Circuit judge did not decide petitioner's recusal motion to disqualify judge as she

should have done.

In this instant case, petitioner's recusal motion was/is not to challenge the constitutionality of rule and not about the Supreme Court Justices but about a personally biased and prejudiced circuit court judge with conflict of interests. See argument under the subtitle THE STATE COURT OF APPEALS above. In contrast to the State's Supreme Court Justices exception from the recusal rule, the Justices should have compelled the lower court judge(s) to comply with and decide the recusal rule(s) motion since the recusal rule pertains to those judges, **with no exception and with no discretion as to whether to comply or not comply with rule.** In this case, there was/is no misinterpretation and/or misapplication of the state's recusal rules. The Courts just did not comply or compel compliance with rules. The Michigan

Supreme Court did not compel the lower court to comply with the recusal rule as it should have done. Since the State Court did not compel compliance with rule as it should have done, respectfully, the United States Supreme Court should compel compliance with rule and/or direct and/or order the State Supreme Court and/or Court of Appeals to compel the State Circuit Court to comply with the State Recusal Rule and/or appoint a new and unbiased judge to hear petitioner's case of fraud on merit.

- **The judicial county involved in this case has seven judges. Two additional judges sit by assignment, making a total of NINE judges in the County. The State's Supreme Court Justices should have disqualified Honorable Manderfield for failing to decide petitioner's MCR 2.003**

recusal motion and/or comply with state's recusal rules and then should have appointed one of the other eight judges to give an unbiased clear mind look at petitioner's claim of fraud on the part of respondent / respondent's Counsel use of fraud, intentional misrepresentation of material facts and law and use of false and res judicata barred claim / evidence to secure court orders in the prior case between the two parties.

The State's Supreme Court should have directed and/or order the State's Court of Appeals to review and/or reconsider petitioner's appeal ***en banc*** *or by a different panel of three judges as requested by petitioner.*

State case No 06-1536-NZ was originally

assigned to Honorable Draganchuk by the Clerk. Then, Honorable Manderfield because of her personal bias, prejudice and intent to retaliate and discriminate against petitioner, reassigned case to herself, wrestling the case out of the hands of the Judge that it was assigned to. She did this to protect fraudulent respondent and Counsel, and also to protect her prior discriminative conducts and decisions in the prior case between the two parties that another judge could have discovered in handling case No-06-1536-NZ. She did so to knowingly injure petitioner.

Respectfully, the Michigan Justices Order of December 10, 2008 shows what petitioner fears to indicate a deep intent of the state Court(s) from the Circuit Court to the Supreme Court, to circle around fraudulent defendant / Counsel that had no and has no defense of its / their fraud, (See **Appendix** D, P.73),

lock arms, to cover up and fix the case of defendant's / defense Counsel's knowing fraud, by not compelling the Circuit Court to comply with the recusal rule, and thereby knowingly approved personally biased judge with conflict of interests failure to comply with recusal rule, to deny petitioner an unbiased hearing of his claim on merit before an impartial tribunal, and consequently knowingly deny him his constitutional equal protection of the laws due process rights and so knowingly deny him justice.

Respectfully, petitioner has had only one motion to disqualify a personally biased and prejudiced judge before the court. That was/is not vexatious.

The search for justice based on fact and evidence to look into respondent and Counsel's fraud that injured petitioner before a neutral, just, impartial and non hostile judge with no conflict of interests like

personally biased Honorable Manderfield who refused to comply with the State's recusal rule in this case, within a fair judicial system was/is not vexatious.
All contrary to the State's Supreme Court Order of December 10, 2008

Respectfully, the Court's order was/is just another way to evade the truth of the case before the court as the circuit court did in its intentional failure to comply with the state recusal rules and failure to decide petitioner's motion to reconsider, judicial duties that were not and are not discretionary but mandatory. The inconvenient truth about petitioner's case before the is that the Courts have been evasive and have used strong-armed tactics to knowingly deny petitioner due justice by violating his constitutional rights to the due process of law. The conducts of

defendant / defense Counsel in the prior case between the two parties were of knowing fraud and intentional misrepresentation of material facts and law to secure court orders before the court and **a personally biased and prejudiced judge.** These conducts are then supported and protected by the superior courts of the state by their failure to compel the judge's compliance with the state recusal rule, therefore knowingly injuring petitioner by denying him the constitutional equal protection of the laws due process rights and consequently knowingly deny him due justice. Respectfully, the conduct(s) of the State Courts below should not be allowed to stand.

The substantive nature of petitioner's complaint **can not and should not be reached** until after the State's Court Recusal rule(s) is/are complied with. Failure of the state Court to comply with state's

recusal rule by procedural **leap-frogging** over rule as in this instant case to reach the substantive nature of petitioner's case as it happened at the state courts was/is putting the cart before the horse, and respectfully, should render all state court orders regarding case No 06- 1536-NZ null and void, because such conduct by the State Courts violated and violates petitioner's constitutional equal protection of the laws due process rights.

State Court(s) leap-frogged the state recusal rule **to knowingly evade and bypass** the recusal rule and so knowingly prevent **unbiased eyes and unprejudiced mind(s)** to look at and deal with the substantive nature of petitioner's complaint of fraud before the court on merit. Again, respectfully, this conduct should render all state court orders on case null and void. Petitioner respectfully ask the

Honorable Court to rule accordingly.

CONCLUSION.

State's Circuit, Appeals and Supreme Courts did not comply with and/or compel compliance with State's Recusal Rules MCR 2.003, consequently knowingly denied petitioner a fair and impartial hearing of his motion to disqualify personally biased Circuit Judge because the motion was not decided. Subsequently, despite petitioner's objections, the Court prematurely unjustly decided petitioner's claim of fraud on the part of respondent / respondent's Counsel, without deciding motion to disqualify judge before deciding claim of fraud, and by doing so, knowingly denied petitioner a hearing before an unbiased impartial tribunal with no conflict of interests like the personally biased Circuit Judge, and

consequently knowingly denied petitioner the constitutional due process rights, injuring petitioner in the process, making the orders of the State Courts regarding Case No 06-1536-NZ invalid because those orders issued **without** compliance with and/or compulsion of compliance with the State's **Recusal Rules** first before those State Orders issued.

Respectfully, the trial judge, Honorable Manderfield erred by ruling on petitioner's claim of respondent's fraud **before and without** deciding petitioner's motion to disqualify her first.

Respectfully, the State Court of Appeals and Supreme Court erred by not compelling the trial court to decide petitioner's motion to disqualify that trial judge first before action on complaint of fraud. Further, the State Supreme Court erred: by enforcing court's judgment that should **not** have issued for failure of

the judge to comply with and decide recusal rule motion, by not appointing a different but neutral and impartial judge to hear petitioner's complaint of fraud despite the fact that the Circuit involved in this case has nine judges.

PRAYER FOR RELIEF.

1. Respectfully, grant Writ.

Or in lieu of granting writ, respectfully:

2. Vacate State Court Orders regarding State Case NO 06-1536-NZ because those orders prematurely issued **without** the State Court compliance with state recusal rule first before issuing those orders and because the State Court failed to direct and/or order compliance with recusal rule, causing petitioner to NOT receive a fair and impartial hearing before an independent and impartial tribunal,

causing petitioner to be injured, and then direct and/or order the State Court **to compel and comply** with state's Recusal Rule by deciding petitioner's motion to recuse by and before a neutral and impartial tribunal, because petitioner is entitled to have his recusal motion heard and/or decided by an impartial tribunal.

3. Vacate the Order of the Michigan Supreme Court because the State Circuit Court's order that it enforces was/is invalid and unjustified, because the order was prematurely issued **WITHOUT** the judge first complying with the States Recusal Rule to disqualify Judge Manderfield before the order was issued. Vacate the order because the premise of the order and judgment was/is respectfully false, unjustified and oppressive. Then direct and/or order the State Supreme Court to vacate the orders of the State Court of Appeals and the Circuit Court and then

order those courts to comply with the State's Recusal Rule MCR 2.003. Vacate the Court's order. It impedes, impairs and violates petitioner's civil and constitutional rights to the courts as a forum where he can present and seek resolution of any dispute with any adversary.

4. Vacate the Order of the State of Michigan Court of Appeals because it mistakes the merit of the state's Recusal Rules when it claimed that the Rule and/or petitioner's challenge to the Circuit Court's personally biased judge failure to comply with that rule is of no merit. Because petitioner's challenge to the Court's lack of compliance with State's Recusal rule is of merit. Direct and/or order the Court to answer petitioner's questions before the Court.

5. Vacate the May 30, 2007 Order of the State Circuit Court as entered on June 20, 2007, **because**

despite petitioner's several objections to proceeding with case of fraud **before and/or without** deciding the recusal motion, the order issued without Honorable Manderfield's compliance with the State Recusal rule. Then direct and/or order that court to comply with the State's Recusal Rule with statement as to its reasons for decision on motion on record and accord petitioner all his legal statutory and constitutional rights.

Petitioner was/is entitled to have a fair hearing and decision on the recusal motion before an impartial tribunal and before the case of fraud can be decided.

6. Enter a declaratory judgment that the State Courts violated and violates petitioner's equal protection of the laws due process rights when the Courts failed to comply with and/or compel compliance with State's Recusal Rules, and as an act of evasion, leap-frogged the rule, to decide petitioner's claim of respondent's fraud. Petitioner's case of fraud was/is not properly before the court **until after** and unless the recusal rule was/is complied with and decided. Petitioner is entitled to have his claim of fraud by defendant/ defense Counsel heard on merit in an impartial and unbiased forum and before a neutral, unbiased and impartial judge with no conflict of interests, and/or undue influence, after the State Courts have complied with State Recusal Rule by deciding petitioner's motion to disqualify Honorable Manderfield.

7. Direct and/or order the State Supreme and/or Appeals Court, and/or the state Court Administrator to appoint a new, neutral and impartial judge out of the other eight remaining judges in the County and/or a neutral and impartial judge from outside the County to hear petitioner's original independent action claim of respondent / Counsel's fraud on merit.

8. Issue a permanent injunction against the State Courts from barring and/or depriving petitioner the access to the courts for civil complaints to protect petitioner's constitutional rights to the courts in order for petitioner to protect his legal rights and interests as necessary.

9. Issue an immediate and permanent injunction against the state courts from retaliating against petitioner for seeking a writ of certiorari against the courts in adjudicating this case and possible future

cases before the court. Direct and/or order the courts to stop discriminating against petitioner.

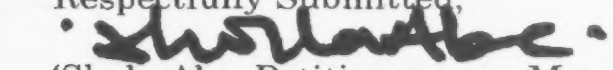
10. Issue an immediate and permanent injunction preventing Honorable Paula Manderfield from participating in any case involving petitioner because of her personal bias and prejudice against petitioner. Honorable Manderfield is poisoned against petitioner.

11. Remand case back to the State Court and direct and/or order the state Courts to comply with the above stated reliefs as requested and directed by the Honorable Court in order to redress the injury that petitioner has suffered because of the Courts non compliance with the State's recusal rules and failure of the Circuit Court to decide petitioner's motion for reconsideration in that court, appoint a federal attorney to monitor case.

12. Retain jurisdiction until at least after the State

Courts have properly complied with State's Recusal Rules and provide petitioner with his due process rights and meaningful judicial process.

Respectfully Submitted,



'Shola Abe, Petitioner. March 4, 2009.
3111-2C Trappers Cove Trail
Lansing, MI 48910. (517) 694-1605.

APPENDIX A.

Court of Appeals, State of Michigan
ORDER

lton T. Davis

Presiding Judge

Shola Abe v Michigan state University
Docket No. 281651 Patrick M. Meter
LC No. 06-001536-NZ Stephen L. Borrello
Judges

The Court orders that the delayed application for leave to

appeal is DENIED for lack of merit in the grounds presented.

Sig/Alton T.Davis

Presiding Judge

STATE OF MICHIGAN

TUBOR

A true copy
entered and certified by
Sandra Schultz Mengel,
Chief Clerk, on

COURT OF APPEALS.

JUN 16 2008
Date

Sig/ Sandra Schultz Mengel
Chief Clerk

APPENDIX A, contd.

Court of Appeals, State of Michigan

ORDER

Alton T. Davis

Shola Abe v Michigan State University

Presiding Judge

Docket No. 281651

Patrick M. Meter

LC No. 06-0011536-NZ

Stephen L. Borrello
Judges

The Court orders that the motion for reconsideration is DENIED.

Sig/ Alton T. Davis

Presiding Judge

STATE OF MICHIGAN.

COURT OF APPEALS

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Jul 17 2008

Date Sig Sandra Schultz Mengel

Chief Clerk

APPENDIX - B

STATE OF MICHIGAN
IN THE INGHAM COUNTY OF CIRCUIT COURT.

BABASHOLA ABE
Plaintiff

Case No. 06-1536-NZ

v Hon. Paula J.M. Manderfield

MICHIGAN STATE UNIVERSITY
Defendant

Babashola Abe
Plaintiff
3111-2C Trappers Cove Trail
Lansing, Michigan 48910
(517) 394-1605

Michael J. Kiley
Attorney for Defendant
Michigan state University

494 Administrative Building
East Lansing, MI 48824-1046
(517) 353-1798

_____/

ORDER

At a session of said court held in Lansing, Michigan

this 20 day of June, 2007,

Present: PAULA J. M. MANDERFIELD

Upon the Court reading Defendant's Motion for Summary Disposition and the parties' written submissions, and the matter having been set for hearing, and the Court being fully advised on the premises;

IT IS ORDERED that the said motion is GRANTED and the action is dismissed, and the Court deems the action to be both frivolous and vexatious, and plaintiff is ordered to compensate Defendant in the amount of ONE-THOUSAND ($1,000) DOLLARS, ALL FOR THE REASONS SET FORTH IN THE COURT'S BENCH RULING ISSUED May 30, 2007.

PAULA J.M. MANDEFIELD

_____

Circuit Judge

Approved for entry:

SANDRA L. RUSSEL
Deputy Clerk

APPENDIX C

ORDER

Michigan Supreme Court

Lansing, Michigan

December 10, 2008

Clifford W. Taylor,

Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelley
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

136999

SHOLA ABE,
Plaintiff-Appellant

v

SC: 136999

COA: 281651
Ingham CC: 06-001536-NZ

MICHIGAN STATE UNIVERSITY,
Defendant-Appellee.
_____/

On order of the Court, the application for leave to appeal the June 16, 2008 order of the Court of Appeals is considered, and DENIED, because we are not persuaded that the question presented should be reviewed by this Court. Costs of $250 are assessed against plaintiff in favor of the defendant under MCR 7.316(D)(1) for filing a vexatious appeal. Plaintiff "Shola Abe is barred from submitting additional filings in this Court in non-criminal matters until he offers proof that he has paid all outstanding court-imposed sanctions.

SEAL OF THE MICHIGAN

SUPREME COURT, LANSING I, Corbin R.

Davis, Clerk of the Michigan

Supreme Court, certify that the

foregoing is a true and complete copy

of the order entered at the direction of

the Court. 11203

December 10, 2008

Sig/ Corbin R. Davies Clerk

APPENDIX D.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Case No 06-1536-NZ

SHOLA ABE, PLAINTIFF/APPELLANT

COA # 281651

v

MICHIGAN STATE UNIVERSITY / APPELLEE

---/

'Shola Abe - Plaintiff- Appellant, Pro Se
3111-2C Trappers Cove Trail,
Lansing, MI 48910
(517) 394-1605 "ORAL ARGUMENT

REQUESTED"

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Michael J. Kiley (P26387) –
Attorney for Appellee

Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798

COURT OF APPEALS
LANSING OFFICE
SANDRA SCHULTZ MENGEL
CHIEF CLERK

_____/

PLAINTIFF'S -APPELLANT'S APPLICATION FOR LEAVE TO APPEAL AS OF RIGHT THE CIRCUIT COURT'S BENCH RULING OF WEDNESDAY, May 30, 2007 AS ENTERED IN ITS June 20, 2007 ORDER THAT GRANTED SUMMARY JUDGMENT, AWARDED MONEY TO DEFENDANT AND DISMISSED PLAINTIFF'S MCR 2.112 (B)(E)(F) CASE OF DEFENSE COUNSEL'S KNOWING FRAUD ON THE COURT AND INTENTIONAL

MISREPRESENTATION OF MATERIAL FACTS AND LAW TO THE COURT AND USING FALSE AND RES JUDICATA BARRED EVIDENCE TO SECURE COURT ORDERS, WITH COURT'S KNOWLEDGE, AND CONSEQUENTLY KNOWINGLY PREVENTED PLAINTIFF FROM HAVING ADVERSARIAL TRIAL ON THE SIGNIFICANT ISSUES OF HIS KNOWING FRAUD AND INTENTIONAL MISREPRESENTATION OF MATERIAL FACTS, MAKING THE PRIOR ORDERS THAT COUNSEL FRAUDULENTLY SECURED IN THE PRIOR CASE BETWEEN THE TWO PARTIES INVALID AND THE DOCTRINE OF RES JUDICATA NOT APPLICABLE TO THOSE PRIOR ORDERS. / **JUDGE MANDERFIELD'S REFUSAL TO RECUSE HERSELF** AND/OR COURT'S FAILURE TO DISQUALIFY JUDGE MANDERFIELD FROM

HEARING PLAINTIFF'S CASE BECAUSE OF HER PERSONAL BIAS AND RETALIATION AGAINST PLAINTIFF AND HAVING PREJUDGED PLAINTIFF'S CASE , **MCR 2.003; 2.003 (C)(3)(a) /** KNOWINGLY ACTING ON CASE THAT SHE KNEW WAS NOT PROPERLY BEFORE HER, THEN KNOWINGLY FAILING AND REFUSING TO ACT ON MOTION FOR RECONSIDERATION OF HER RULING AND ORDER / SUPPORTING BRIEF AND

APPENDIX D - contd.

A STATEMENT OF QUESTIONS INVOLVED.

QUESTION:

1. IS THE LOWER COURT'S BENCH RULING OF MAY 30, 2007 ENTERED ON ITS ORDER OF JUNE 20, 2007 **VALID,** CONSIDERING THE FACT THAT THE COURT, BEFORE ACTING ON CASE

WITH JURY TRIAL DEMAND AND GRANTING SUMMARY JUDGMENT TO DEFENDANT, KNOWINGLY DID NOT DECIDE PLAINTIFF'S MCR 2.003, 2.003 (C)(3)(a) MOTION TO DISQUALIFY JUDGE MANDERFIELD AND/OR FOR JUDGE MANDERFIELD TO RECUSE HERSELF FROM HEARING PLAINTIFF'S COMPLAINT OF DEFENSE COUNSEL'S FRAUD AND INTENTIONAL MISREPRESENTATION OF MATERIAL EVIDENCE.

MATERIAL FACTS AND LAW, USING FALSE AND RES JUDICATA BARRED EVIDENCE IN SECURING COURT ORDERS AS SHE SHOULD HAVE DONE, INCLUDING TWO ARBITRARY PREJUDICIAL PRIOR ORDERS BY JUDGE MANDERFIELD, FRAUDULENTLY SECURED BY COUNSEL ON May 26, 2004 & February 8, 2006, AS

FILED ON DECEMBER 4, 2006, IN ORDER TO DENY PLAINTIFF EQUAL JUSTICE UNDER THE LAW BECAUSE OF HER PERSONAL BIAS AGAINST PLAINTIFF, BECAUSE OF PLAINTIFF'S RACE AND NATIONAL ORIGIN, RETALIATION AGAINST PLAINTIFF FOR HAVING FILED A COMPLAINT AGAINST THE JUDGE BEFORE THE JUDICIAL TENURE COMMISSION.

PLAINTIFF ANSWERS NO.

DEFENSE COUNSEL HAS NOT ANSWERED, SHOULD ANSWER NO.

THE LOWER COURT FAILED TO ANSWER.

STANDARD OF REVIEW:

ABUSE OF DISCRETION, FUNDAMENTAL AND PREJUDICIAL ERROR.

2. IF THE COURT'S BENCH RULING AND ORDER WERE VALID, DID THE COURT ABUSE ITS DISCRETION AND/OR COMMITTED FUNDAMENTAL AND PREJUDICIAL ERROR BY ITS BENCH RULING OF May 30, 2007 ENTERED ON ITS ORDER OF JUNE 20, 2007 THAT GRANTEE SUMMARY JUDGMENT AND AWARDED MONEY TO DEFENDANT REGARDING PLAINTIFF'S CASE, DECEMBER 4, 2006 COMPLAINT THAT DEFENDANT / DEFENSE COUNSEL USED KNOWING FRAUD, INTENTIONAL MISREPRESENTATION OF MATERIAL FACTS AND LAW, FALSE AND RES JUDICATA BARRED CLAIM / EVIDENCE TO SECURE THE COURT ORDERS OF October 11, 2000, May 26, 2004, February 8, 2006 AND CONSEQUENTLY KNOWINGLY PREVENTED PLAINTIFF FROM

HAVING ADVERSARIAL TRIAL ON THE SIGNIFICANT ISSUE OF HIS FRAUD, IN LIGHT OF THE FACT THAT:

I. Counsel did not deny the allegations in plaintiff's complaint, and as a consequence, Counsel admitted to and waived those complaints as filed by plaintiff. MCR 2.111 (E)(1)(F)(2).

II. There was/is no evidence of defendant's / Counsel's claims on which he fraudulently secured the Court Orders of October 11, 2000, May 26, 2004 and February 8, 2006 on record. Counsel secured the Court's Bench ruling of May 30, 20007 entered on the Order of June 20, 2007 relying on and taking advantage of Judge Manderfield's deep seated personal bias against plaintiff, because of plaintiff's race and national origin, and Judge Manderfield's

retaliation against plaintiff for having filed a complaint against the Judge before the Judicial Tenure Commission for her personal bias against plaintiff prior to her Bench Ruling of May 30, 2007 entered in her order of June 20, 2007.

III. Neither the Court nor the defendant made any meritorious non discriminatory factual, evidentiary, and/or legal argument as to why they believe that plaintiff's allegations and claims of Counsel's knowing fraud and intentional misrepresentation of material facts, using false evidence in securing Court Orders were / are frivolous and vexatious, making Counsel's claim(s) a conjecture on which a summary judgment can not be based.

IV. Plaintiff's CONCLUSIVE, BEST material documentary evidence on record contracted and contradicts defendant, Counsel and the Court in their

claims in plaintiff's case before the Court. Plaintiff's BEST EVIDENCE shows defendant's / Counsel's knowing fraud and intentional misrepresentation of material facts and use of false evidence in securing Court Orders, and plaintiff's case not to be frivolous nor vexatious.

V. The conducted no evidential hearing as to plaintiff's claim of defendant / Counsel's knowing fraud and intentional misrepresentation of material facts in securing the Court Orders that he secured in the prior case between the two parties.

VI. Case was not properly before Judge Manderfield when she made her Bench ruling of May 30, 2007 as entered in her Order of June 20, 2007, making such ruling and Order invalid.

PLAINTIFF ANSWERS: YES to each of the items to the question.

DEFENSE COUNSEL ANSWERS: Counsel has not answered to each of the questions. He should answer YES to each one of the items to the question.

THE COURT ANSWERS: The lower Court failed to answer to each of the items to the question.

STANDARD OF REVIEW: ABUSE OF DISCRETION, FUNDAMENTAL AND PREJUDICIAL ERROR.

STATEMENT OF FACTS.

1. Plaintiff's original independent action MCR 2.112(B)(E)(F) complaint of defense Counsel's use of knowing fraud, intentional misrepresentation of material facts and law, use of false and res judicata barred evidence to secure Court Orders in the prior case between the two parties was filed on December 4, 2006. Addendums to complaint filed January 4, and May 18, 2007, and August 6, 2008.

2. Plaintiff's motion to disqualify Judge

Manderfield and/or for Judge Manderfield to recuse herself from plaintiff's complaint was filed on December 4, 2006.

3. The Court issued a Bench ruling on May 30, 2007, entered on its order of June 200, 2007, granting summary judgment to defendant and dismissing plaintiff's case **without** deciding motion to disqualify Judge Manderfield.

4. Plaintiff timely asked the Court for reconsideration of its order to grant judgment to defendant and dismiss plaintiff's case. Court failed to decide plaintiff's motion for reconsideration.

5. Consequently, plaintiff seeks leave to appeal as of right.

APPENDIX D contd.

STATE OF MICHIGAN

IN THE COURT OF APPEALS

Case No. 06-1536-NZ

SHOLA ABE, PLAINTIFF- APPELLANT

COA # 281651

V

Hon. Paula Manderfield

MICHIGAN STATE UNIVERSITY / APPELLEE

Shola Abe - Plaintiff - Appellant, Pro Se.
3111-2C Trappers Cove Trail,
Lansing, Michigan 48910
(517) 394-1605

Michael Kiley, (P26387) - Attorney for Appellee
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798

_____/

APPELLANT'S MOTION FOR AN EN BANC

RECONSIDERATION OF THE COURT'S ORDER OF

JUNE 16, 2008.

Appellant respectfully move the Honorable Court en banc to reconsider the Court's panel Order of June 16, 2008.

Respectfully, the June 16, 2008 Order of the Court of

Appeals mistakes the facts, evidence and the law of appellant's case before the Court that could not be supported by the whole Court.

See plaintiff'-appellant's Application for Leave to Appeal as filed with the Court.

PROCEDURAL ISSUES.

DISQUALIFICATION OF JUDGE: MCR 2.003, 2.003 (c)(3)(a).

Respectfully, the procedure below was arbitrary

and capricious.

Respectfully, Honorable Manderfield put the cart before the horse when she acted on plaintiff's independent action claim of defense Counsel's knowing fraud on the court and intentional misrepresentation of material facts and law to the court and knowingly using false and res judicata barred claim / evidence to secure court orders <u>without first acting on the motion to disqualify her and/or for her to recuse herself from hearing plaintiff's complaint against defendant / defense Counsel.</u> She should not have acted on case without acting on motion. She should have acted on motion to disqualify her first and let that be decided and settled according to Court rules as plaintiff requested, EVEN IF SHE BELIEVED OR BELIEVES THAT SHE WAS /IS NOT PERSONALLY BIASED, PREJUDICED, NOR PREJUDGED

PLAINTIFF'S CASE, NOR RETALIATED against plaintiff as plaintiff claimed and/or alleged in his motion. And if she should have denied the motion, to send the denial to the chief Judge of the Court for review. This issue in some ways is similar to Ireland v Smith cited below that a different panel of this Honorable Michigan Court of Appeals decided in 1995. Maybe the court below believes that there is no reason for the court rules involved in plaintiff - appellant's case to be, and so refused to follow them, and if that is the case, maybe the rules should no longer exist.

The reality in this case is, plaintiff - appellant did not and can not receive a fair hearing before the Honorable Manderfield. See *Fieger v Ferry*, 471 F. 3d. 637 (6th Cir. 2006).

The Court of Appeals panel Order of June 16, 2008 conflicts with the Court of Appeals Opinion as ruled in

the case of Ireland v Smith (1995), 214 Mich. App. 235, 542 N.W. 2d 344. Aff'd on other ground, mod on other grounds (1996) 451 Mich. 457, 547 N.W. 2d 686, related proceeding (1998) 230 Mich. App. 607 , 584 N.W. 2d 632. See appellant's Application for leave to appeal brief before the Court, page 7-13.

The court below not only refused to decide motion to disqualify Judge, Honorable Manderfield failed to decide plaintiff's timely motion to reconsider her order of June May 30, 2007, making the case below unconcluded. One of the reasons she did this is that she knew that plaintiff would have won his case before the court on merit.

Respectfully, the lower Court's conduct as stated above renders that Court's Order on plaintiff's case invalid.

The Honorable Court of Appeals considers

appellant's application for leave to appeal as delayed. After the June 20, 2007 Order of the Circuit Court, appellant filed a timely motion to reconsider. Appellant was **waiting for the lower court to decide his timely motion to reconsider.** It was when the Court failed and/or refused to decide that motion that plaintiff filed his application for leave to appeal.

APPENDIX D -contd.

STATE OF MICHIGAN
COURT OF APPEALS
LANSING OFFICE

January 11, 2008

ABE SHOLA
3111-2C TRAPPERS COVE
LANSING, MI 48910

KILEY MICHAEL J.
494 ADMINISTRATION BLDG
MICHIGAN STATE UNIV
EAST LANSING, MI 48824

Re: Shola Abe v Michigan State University

Court of Appeals No. 281651

Lower Court No. 06-0015336-NZ

Dear Parties:

Enclosed please the answer to the application for leave to appeal, and the reply to that answer that you submitted in the above- entitled matter. These documents are being returned to you **because the answer was untimely filed as it was due 21 days from** the service of the corrected application for leave to appeal. The reply to that answer is returned because the answer was returned, and also because there is no provision in the court rules for filing a reply brief to an answer to an application for leave. If you have any questions, please contact this office immediately.

Very truly yours,
Neal Villhauer
District Commissioner

NV/nam

By: Sig/_____
Mark A. McElwee

cc: enclosures

APPENDIX E.

STATE OF MICHIGAN
IN THE
INGHAM CIRCUIT COURT

BABASHOLA (SHOLA) ABE,
Plaintiff, Pro Se.
v CASE NO. 06-1536-NZ

Hon. Paula Manderfield.

MICHIGAN STATE UNIVERSITY-
COLLEGE OF OSTEOPATHIC MEDICINE
Defendant

_____/
Babashola Abe

Plaintiff / Appellant
3111-2C Trapper's Cove Trail
Lansing, Michigan 48910
(517) 394 - 1605

Michael J. Kiley(P26387)
Attorney for Defendant /Appellee
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046

(517) 353-1798

_____/

MOTION TO DISQUALIFY JUDGE PAULA MANDERFIELD FROM HEARING PLAINTIFF'S MCR 2.112 COMPLAINT AND JURY DEMAND . MCR 2.003.

Plaintiff respectfully hereby move the Honorable Court to disqualify Judge MANDERFIELD, or for the Judge to recuse herself from hearing this case **because:**

1. Judge Manderfield's actions and Order of February 8, 2006 was/is a result of the Judge's **RETALIATION** and bias against plaintiff for having

complained about the judge to the Judicial Tenure Commission regarding the Judge's bias against plaintiff in the conduct of the case before the judge prior to the February 8 Order of the Court. See summary of plaintiff's complaint before the Judicial Tenure Commission appended.

Judge Manderfield would again **RETALIATE against plaintiff for having complained about the judge to the Judicial Tenure Commission regarding the Court's bias against plaintiff in the prior proceedings of the prior case before the Court.**

2. Judge Manderfield has a personal knowledge of the critical relevant material facts and documentary evidence that are **in dispute** in the prior case and in this complaint. Specifically:

(I) Plaintiff's academic record at defendant's school

and defendant's policy **were / are within defendant's control** and the Court had/has access to that record which was/is contrary to defendant's / defense Counsel's claims in its Exhibits 7 & 8.

(II) The Court is in possession of defendant's **fraudulent Exhibits 7 and 8** that defense Counsel **knowingly used to fraudulently secure** the Court's Opinion and Order of October 11, 2000.

(III) The Court is in possession of the May 14, 2004 **presentment of order** to the Court by defense Counsel, in which **Counsel** knowingly committed **intentional fraud** and **knowing misrepresentation** of material facts in his **presentment** of order when he made two important **FALSE** claims in that presented order. **One,** that APPELLATE COURT HAS UPHELD the October 11, 2000 Order of the Court.

Two, that there was/is NO FURTHER REVIEW OF THAT ORDER AVAILABLE.

These are the <u>false and fraudulent claims</u> that defense Counsel knowingly fraudulently used to secure the May 26, 2004 Order of record in the prior case between the two parties as part of his **frivolous** defense of the defendant.

Judge Manderfield knew or should have known that defense Counsel's claims were false, especially after plaintiff argued accordingly before the Judge, **but because of her bias** against plaintiff, she accepted that which she knew was false from defense Counsel resulting into the order of May 26, 2004 as fraudulently secured by Counsel. That order was also fraudulent submitted to the Court of Appeals by defense Counsel, and he intentionally induced the Court of Appeals to claim that plaintiff had appealed

that fraudulent order, when such claim was absolutely false. Thereby Counsel by ~~such~~ deceptive and fraudulent conduct prevented plaintiff from having adversarial trial and review of plaintiff's claims before the Court.

Plaintiff offered relevant **conclusive** material documentary evidence that contradicts defendant's claims in its Exhibits 7 & 8. **Judge Manderfield in her bias and intent to retaliate against plaintiff, refused to take plaintiff's conclusive material evidence.** She also refused to keep a separate record of evidence as requested by plaintiff. See: Michigan Rules of Evidence, (MRE) 101 - 1102. **The Judge knew** that defendant's claims against plaintiff **in its Exhibits 7 & 8 were/are false.**

The Judge knew and knows plaintiff's academic record and defendant's policy, that are **within defendant's**

control did not and does not support defendant's claims against plaintiff in its Exhibits 7 & 8 and so makes the October 11, 2000 order of the court that rested on those exhibits, respectfully invalid.

Judge Manderfield **knew** that according to the **Michigan Rules of Evidence**, (MRE) 301, 101-1102, that plaintiff had and has the right to *an Appeals of Right* of her refusal to take evidence. Then Judge Manderfield **in her bias and intent to retaliate against plaintiff,** took a break from the motion hearing to call the Court of Appeals to coordinate with that court on how to intentionally prevent plaintiff from appealing her decision not to take evidence, and to as she did, induce the Court of Appeals not to accept or review plaintiff's appeal, essentially to knowingly deny plaintiff his legal rights. See February 8, 2006

transcript of oral argument before the court, page 3, page 8, line 24-25. **"Do not come back to this court. Do not go to the Court of Appeals. They've already issued an order".** The result of such conduct by the Court was the Court of Appeals refused to accept plaintiff's appeal of right papers. Here the Judge claimed that the Court of Appeals had prepared an order against plaintiff before the proceeding before her even concluded, before plaintiff even appealed her order. She took similar action after her order of May 12, 2004, and the May 26, 2004 order fraudulently secured by defense Counsel, to prevent the Court of Appeals from reviewing my appeals of right of her May 12, 2004 order denying plaintiff motion for a new trial under MCR 2.611. See Judge Manderfield Order of May 12, 2004. **Plaintiff has the right to the Court(s), and the right to have**

his case decided <u>on legal principles on merit according to court rules,</u> a right that should not be denied *by personal bias and retaliatory intent* as Judge Manderfield did in the prior case before her. Judge Manderfield in the prior proceedings before her, used the power of the Court, using her black robe as a cover to exercise her intentional bias against plaintiff because of plaintiff's race and national origin. Justice is plaintiff's civil right. A right that should not be denied. Judge Manderfield in her bias and retaliatory intent in the prior case before her, knowingly denied plaintiff justice, and so knowingly denied him his civil and constitutional rights.

The July 7, 1998 Appellate Opinion and Order No. 203365 regarding this case that the Court refused to accept on February 8, 2006 is of record in that court.

So even though the Court refused to accept it from plaintiff, it is still available to the Court, **because it is within the Court's control.** *It was remanded to that Court by the Court of Appeals on July 7, 1998,* and the remanded issue of defendant's discriminatory denial of plaintiff readmission on January 15 or 18, 1993 that subsequently resulted into the October 11, 2000 Opinion and Order of the Court which defense Counsel falsely claimed to have been upheld by the Court of Appeals was the issue before the Court on February 8, 2006.

(IV) On February 8, 2006, **in her bias and retaliatory intent** against plaintiff, Judge Manderfield intentionally accepted defense Counsel's **false** claim that she knew or should have known was false. **In her bias against plaintiff**, she knowingly accepted the defense Counsel's claim that the issue

before the Court on February 8, 2006 was the issue of DISMISSAL, **an issue that was/is barred by the doctrine of res judicata,** while she knowingly disregarded plaintiff's presentation to the court of the proper and right issue before the Court on that date as being

the issue of DEFENDANT'S COUNSEL'S KNOWING USE OF DEFENDANT'S FALSE AND FRAUDULENT EXHIBITS 7&8 TO KNOWINGLY FRAUDULENTLY SECURE THE OCTOBER 11, 2000 ORDER OF THE COURT REGARDING PLAINTIFF'S CLAIM THAT DEFENDANT DISCRIMINATORILY DENIED HIM READMISSION ON JANUARY 15, 18, 1993 FOR NO LEGITIMATE NON DISCRIMINATORY REASON, AFTER PLAINTIFF RETURNED FROM VOLUNTARY LEAVE OF ABSENCE. Along with

this issue was also the issue of defense Counsel's false and fraudulent claims **in his presentment of order of May 14,** 2004 on record that he fraudulently used to secure the Order of May 26, 2004.

See transcript of oral argument on February 8, 2006, page 3-6.

Judge Manderfield followed her knowingly accepting the fraudulent claim by defense Counsel, by saying to plaintiff **"... You were expelled from medical school"**. *See transcript of oral argument of the February 8, 2006 motion hearing before Judge Manderfield, page 9, line 2.* A statement that was false. I was not expelled from medical school on January 15, 18, 1993 when defendant knowingly denied me readmission with no legitimate non discriminatory reason under a false pretext that plaintiff had 42.25% failure rate. Further, the issue

of dismissal was not before the Court on February 8, 2006 as falsely claimed by defense Counsel and as stated by Judge Manderfield. That issue was barred by appellate Order of July 7, 1998 due to expired statute of limitation, and so the doctrine of res judicata applied and applies to that specific issue.

3. Judge Manderfield **PREJUDGED** possible future related litigation between the two parties with her conduct of the motion hearing of February 8, 2006 on record, and therefore with her conduct of that motion hearing, has announced and expressed her deep bias against plaintiff ahead of time regarding such litigation like this plaintiff's complaint. The Judge announced her existing and future bias against plaintiff during motion hearing on February 8, 2006 as done in all of her decisions in the prior case with no legal basis. See: Transcript of oral argument on

February 8, 2006 motion hearing, pages 1-10, especially pages 8-9. See *People v. Coones* (1996) 216 Mich App 721, 550 NW2d 600. With such **prejudgment** by the Judge, she **CAN NOT** impartially hear plaintiff's complaint before the Court.

Judge Manderfield in further expression **of her bias against plaintiff** during motion hearing on February 8, 2006, instigated and encouraged defense Counsel to take some other actions against plaintiff if plaintiff were to again try to get justice for defendant's intentional discriminations against him. See: Transcript of oral argument of motion hearing on February 8, 2006, page 9, lines 11-14.

4. Judge Manderfield with her deep seated bias against plaintiff, did not and does not consider plaintiff as having the right to equal justice under the law as guaranteed by the State of Michigan and

the U.S. Constitution because of plaintiff's race and national origin. Plaintiff does not look like most of the faces familiar to her, or sound like most of the voices she is familiar with in the course of her judicial duties. Also the Court is unhappy with plaintiff for representing himself in standing up and speaking up for his legal rights. Judge Manderfield was/is unhappy that plaintiff did not and has not just cower to the power of the court as has been unfairly exercised against plaintiff in the prior case, and/or to just accept the knowing and intentionally life destroying misrepresentations about plaintiff and his academic record by defendant, and/or to just accept the fraud and intentional lies about material facts, the manipulations of facts and the judicial process, and abuse of plaintiff by defense Counsel in the prior case, as maybe expected plaintiff to do by both the

Court and defendant. In the prior case, Judge Manderfield in her **bias** and intent to retaliate against plaintiff, blurred the line between being the judge and being an attorney for defendant, that just by her own will, with disregard for the laws of the case before her, nullified the concept and process of true adversarial proceedings in the prior case between the two parties before her. Consequently, Judge Manderfield **CAN NOT** impartially hear plaintiff's complaint before the Court

Secondarily, Judge Manderfield's bias against plaintiff possibly may have to do with the Judge's intentional effort to ingratiate herself with the defendant for possible future considerations for positions at defendant's institution at any level, especially, as Dean of defendant's Law School, and/or

for any other benefits, or personal gains, in any form or manner, including pecuniary, that might flow her way from defendant, now or in the future. Also Judge Manderfield's bias against plaintiff may also have some roots in her possibly intentionally positioning herself for consideration for future promotion to higher court(s) and/or consideration for other political positions within the political establishment of this state. One other factor that might have been operating in her intentional bias against plaintiff, was/is knowingly declaring her loyalty and allegiance to the retired Judge Houk, the retired Chief Judge whose vacant position as circuit judge Honorable Manderfield assumed, by not overruling his prior decision, even if that judgment like the October 11, 2000 on record was incorrect according to the facts, evidence and the laws of the case before her.

Regardless, Judge Manderfield seems to be exploiting plaintiff's case and situation to indirectly further her own personal agenda, promoting the growth of her self, her career and her family, while knowingly with her prejudicial judicial actions, along with defendant's destructive and fraudulent intentional lies against plaintiff and his academic record as in its Exhibits 7 & 8, further destroying plaintiff's life, family and career with her personal and judicial bias against plaintiff instead of providing plaintiff with due justice according to the facts, evidence and laws of plaintiff's case before the judge, and as she swore to uphold the law in her oath of office.

Respectfully, that Honorable Manderfield be disqualified or for the Judge to recuse herself from hearing this complaint to clear the way for fair and just proceedings on its merits according to the facts,

material evidence, and the rule of law of this case, as statutorily and constitutionally guaranteed to plaintiff, because Judge Manderfield can **NOT** impartially hear this case.

See: *People v. Coones* (1996) 216 Mich App. 721 550 NW2d 600; *Michigan Association of Police v. Pontiac* (1989) 177 Mich App. 752, 442 NW2d 773, app den.(1990) 434 Mich. 876.

If the Honorable Manderfield should deny this motion, plaintiff respectfully requests that the motion be referred to the Chief Judge for his consideration and decision. MCR 2.003 (C)(3)(a).

Respectfully Submitted,

Sig/ Shola Abe

Shola Abe, Plaintiff. Dated: December 1, 2006

PLAINTIFF'S AFFIDAVIT.

Plaintiff through personal knowledge swears as follows:

1. Judge Manderfield RETALIATED against plaintiff with her actions during motion hearing on, and in her Order of February 8, 2006 for plaintiff having complained about the Judge to the Judicial Tenure Commission for the Judges bias against plaintiff in the proceedings of the prior case before the judge prior to February 8, 2006. Judge Manderfield would again RETALIATE against plaintiff for having complained about her to the Judicial Tenure Commission for her bias against plaintiff during the prior proceedings of the prior case before the Judge.

2. That plaintiff's academic record, defendant's Exhibits 7 & 8, and defendant's institutional Policy and procedures were WITHIN DEFENDANT'S

CONTROL throughout the duration of the prior case.

3. That Judge Manderfield knew or should have known that the issue of dismissal presented to the Court by defense Counsel to secure the February 8, 2006 was not before the Court and should not have granted judgment to defendant on an issue **barred by the doctrine of res judicata.** But because of the Judge's **bias** and retaliatory intent against plaintiff, for plaintiff having complained about her to the Judicial Tenure Commission about her bias against plaintiff in her unfair conduct of plaintiff's case before her, she ruled that the issue before the Court on February 8, 2006 was the issue of dismissal, that plaintiff was expelled from medical school, even though such claims were incorrect.

4. Judge Manderfield, because of her bias and retaliatory intent against plaintiff, refused to accept

conclusive material evidence that plaintiff offered to the Court that would have proved defendant's allegations and claims against plaintiff as false.

5. Judge Manderfield, in her bias and retaliatory intent against plaintiff, **prejudged** possible future related litigation between the two parties.

5. Judge Manderfield, in her bias and retaliatory intent against plaintiff, with her Order of February 8, 2006, knowingly blocked appellate review of her refusal to accept plaintiff's conclusive material evidence offered to her by plaintiff during motion hearing on February 8, 2006, and knowingly blocked plaintiff from filing legal papers in the Court to respond to her Order of February 8, 2006.

6. In her bias against plaintiff, Judge Manderfield knowingly accepted defense Counsel's false and fraudulent claims in his presentment of order of May

14, 2004 on record, and allowed defense Counsel to fraudulently such false and fraudulent claims to secure the Order of May 26, 2004.

7. Judge Manderfield, in her bias and retaliatory intent against plaintiff, in her own words told plaintiff not to come back to "her" courtroom.

8. Judge Manderfield, in her bias and retaliatory intent against plaintiff, condoned defense Counsel's deliberate fraudulent conducts, his knowing misrepresentation of material facts, his evasive and deceptive professional conducts, his delay tactics and antics in the prior proceedings before the Judge **by granting defense Counsel's demands** and requests for court orders and sanctions against plaintiff that were based on Counsel's knowing fraud and misrepresented facts, including among others, Counsel's February 8, 2006 demand that the Court

issue an order to prevent plaintiff from filing future cases against defendant, so that defendant's knowing fraud and intentionally misrepresented claims against plaintiff, and Counsel's knowing fraud and intentional misrepresentation of material facts that he used to fraudulently secure that Order of October 11, 2000, May 26, 2004 and February 8, 2006 could not be brought to light.

In her bias against plaintiff, she **condoned Counsel's frivolous defense of defendant's case that was/is frivolous.** The Judge condoned Counsel's use of delay tactics to frustrate plaintiff and confuse the issues, and then blame time delay of the prior case on plaintiff. **Time delay** of the prior case as the judge mentioned on February 8, 2006 was **not of plaintiff's doing** and so, NOT a legitimate excuse to prevent setting straight plaintiff's misrepresented

academic record by defendant as claimed in Its letter of January 18, 1993 in the Court record, and not a legitimate excuse to deny plaintiff due justice.

Respectfully submitted,

Sig/ Shola Abe ___
'Shola Abe, Plaintiff.

Subscribed and sworn to before me,

Sig/ Bernadette J. Caudel

Notary Public, November 29, 2006.

PROOF OF SERVICE.

Plaintiff hereby certify that a copy of this Motion is served this date on the defendant / defendant's Counsel, Mr. Michael Kiley, as addressed above by United States first class mail.

Dated: December 1, 2006.
Sig/_____

'Shola Abe, Plaintiff.

STATE OF MICHIGAN
IN THE
INGHAM CIRCUIT COURT.

'SHOLA (BABASHOLA) ABE - PLAINTIFF
V.
MICHIGAN STATE UNIVERSITY
COLLEGE OF OSTEOPATHIC MEDICINE
DEFENDANT.

CASE NO. 06-1536-NZ

_____/

HON. PAULA MANDERFIELD

'Shola Abe, In proper
Plaintiff
3111-2C Trappers Cove
Lansing, MI 48910
(517) 394 -- 1605

Michael J. Kiley, (P26387)
Attorney for Defendant
Office of General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798

_____/

ADDENDUM TO PLAINTIFF'S MOTION TO DISQUALIFY HONORABLE MANDERFIELD FROM HEARING PLAINTIFF'S COMPLAINT BEFORE THE COURT.

1. Plaintiff respectfully requests that plaintiff's **MCR 2.003** motion to disqualify Judge Manderfield be heard without a formal motion hearing relying on the reasons for plaintiff's motion as stated in plaintiff's motion brief.

2. If the motion to disqualify Judge Manderfield should be denied by the Judge, Plaintiff respectfully requests that the motion be referred to the Honorable Chief Judge of the Circuit Court for consideration. MCR 2.003(C)(3)(a).

Plaintiff dreads appearance before Judge Manderfield, not knowing what she might do in light of her directive that plaintiff **not to come back to her court.** See page 3, page 8, line 24 of the transcript of oral argument before the Judge on

February 8, 2006. Plaintiff's fear extends to the general community where maybe her personal or institutional and/or defendant's operatives might act against plaintiff on her and/or defendant's behalf.

Respectfully submitted

Sig/ 'Shola Abe, plaintiff.

Dated: January 4, 2007.

PROOF OF SERVICE.

I, plaintiff hereby certify that on this date, I served a copy of plaintiff's addendum to plaintiff's motion to disqualify Judge Manderfield from hearing plaintiff's complaint before the Court on defendant / defense Counsel as addressed above by United States first class mail.
Respectfully,

Sig/ 'Shola Abe, Plaintiff

Dated: January 4, 2007.

APPENDIX E - contd.

STATE OF MICHIGAN

IN THE INGHAM COUNTY CIRCUIT COURT

ase No. 06-1536-NZ
Hon. Paula Manderfield

'SHOLA (BABASHOLA) ABE
Plaintiff
v

MICHIGAN STATE UNIVERSITY
Defendant
_____/

Babashola ('Shola) Abe
plaintiff
3111-2C Trappers Cove, Lansing, MI 48910

Michael J. Kiley (P26387)
Attorney for Defendant
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 432-1963
_____/

SECOND FOLLOW-UP TO PLAINTIFF'S JULY 9, 2007 MOTION FOR RECONSIDERATION.

Plaintiff respectfully asks the Honorable Court to reconsider its Bench ruling of May 30, 2007 to grant defendant summary judgment and dismiss plaintiff's case cited above as entered on June 20, 2007 on these grounds.

1. Respectfully, case was not properly before the Court **without** the Court acting on plaintiff's motion to disqualify Judge Manderfield and/or for Judge Manderfield to recuse herself from hearing plaintiff's case for the reasons stated in plaintiff's motion and addendums...

APPENDIX E contd.

PAGE 3, SECOND PARAGRAPH OF PLAINTIFF'S SECOND ADDENDUM TO HIS MCR 2.112 (B)(C)(F) FRAUD COMPLAINT AT THE

STATE CIRCUIT COURT.

In lieu of the hearing of defense motion for summary judgment as scheduled for May 30, 2007, and in the interest of justice and progress of case NO. 06-1536-NZ, **plaintiff respectfully strongly objects to hearing defense motion before hearing plaintiff's motion to disqualify Judge Manderfield.** Plaintiff respectfully ask the Court to render its decision on plaintiff's motion to disqualify Judge Manderfield from hearing plaintiff's complaint before the Court due to the reasons stated in plaintiff's motion brief and notify both parties of the disposition of that motion. Plaintiff's case No.06-1536-NZ was assigned to Honorable Draganchuk, but Judge Manderfield ordered the case to herself. Respectfully, case #06-1536-NZ is not before Judge...

APPENDIX E contd.

STATE OF MICHIGAN

IN THE INGHAM CIRCUIT COURT

'SHOLA (BABASHOLA) ABE, PLAINTIFF

V

MICHIGAN STATE UNIVERSITY-
COLLEGE OF OSTEOPATHIC MEDICINE
DEFENDANT
_____/

'Shola Abe, In Pro Per
plaintiff
3111-2C Trappers Cove
Lansing, Michigan 48910
(517) 394-1605

Michael J. Kiley (P26387)
Attorney for Defendant
Office of the General Counsel
Michigan state University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798.
_____/

PLAINTIFF'S COMPLAINT AND JURY DEMAND,

MCR 2.112(B)(E)(F) - CAPTION.

A civil action between these parties arising out of the transaction or occurrence alleged in the complaint has **NOT** been previously filed in this court.

The Court closed the previous case on February 8, 2006, after defense Counsel KNOWINGLY misrepresented and FRAUDULENTLY used a January 11, 1996 "Issue of Dismissal", BARRED by the Appellate Order of July 7, 1998, NO 203365, and/or by the DOCTRINE OF RES JUDICATA TO FRAUDULENTLY SECURE THE February 8, 2006 Order, and in effect, COVER-UP HIS KNOWING FRAUD AND INTENTIONAL MISREPRESENTATION OF MATERIAL FACTS IN HIS EXHIBITS 7 & 8 on record that he KNOWINGLY FRAUDULENTLY AND DISHONESTLY used as FALSE EVIDENCE to fraudulently secure the Court Order of October 11, 2000, and also to cover-up his

knowingly false claims in his PRESENTMENT OF ORDER of May 14, 2004, that he knowingly fraudulently used to secure the May 26, 2004 Order, in order to cover-up the FRAUD and intentional misrepresentation of material facts in his Exhibits 7 & 8 that he knowingly fraudulently used to secure the October 11, 2000 Order and therefore KNOWINGLY PREVENTED plaintiff from having adversarial trial on the significant issue of Its/his knowing misrepresentations and material evidence regarding its/his intentional fraud and false claims in those exhibits 7&8 as used to fraudulently secure the Order of October 11, 2000, making the Orders in the prior case invalid, and making the doctrine of RES JUDICATA NON APPLICABLE under this circumstance.

APPENDIX E contd.

STATE OF MICHIGAN
IN THE SUPREME COURT

SHOLA ABE - PLAINTIFF/APPELLANT
Supreme Court # 136999

V

COA # 281651
MICHIGAN STATE UNIVERSITY /APPELLEE.
Case No. 06-1536-NZ
Hon.PaulManderfield._____/

'Shola Abe - Plaintiff-Appellant, Pro Se
3111-2C Trappers Cove Trail,
Lansing, Michigan 48910
(517) 394-1605

RECEIVED
AUG 6 2008
CORBIN DAVIS
CLERK SUPREME COURT

Michael J. Kiley (P26387) - Attorney for Appellee
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824- 48824-1046
(517) 353- 1798

_____/

ADDENDUM TO APPELLANT'S APPLICATION FOR LEAVE TO APPEAL.

Respectfully, there is no other, and there has not been another original independent action complaint initiated against defendant / defense Counsel by appellant in the past under MCR 2.112(B)(E)(F) for using KNOWING FRAUD, INTENTIONAL MISREPRESENTATION OF MATERIAL FACTS AND LAW, KNOWINGLY USING RES JUDICATA BARRED CLAIM / EVIDENCE TO SECURE COURT ORDERS IN THE PRIOR CASE BETWEEN THE TWO PARTIES beside the original independent action complaint as filed on December 4, 2006, docket # 06-1536-NZ.

Appellant was unknowingly mistaken in the caption of his complaint, the first sentence in that caption should have stated that - " civil action between these two

parties out of the transaction or occurrence alleged in this complaint has not been filed previously in this court.

APPENDIX F.

STATE OF MICHIGAN
IN THE SUPREME COURT.

SHOLA ABE, PLAINTIFF APPELLANT
Supreme Court
#136999

v

COA # 281651

ase # 06-2536-NZ
MICHIGAN STATE UNIVERSITY /APPELLEE
Hon. Paula Manderfield.

---/

Shola Abe - Plaintiff, pro Se
3111-2C Trappers Cove Trail
Lansing, Michigan 48910
(517) 3944-1605

Michael Kiley (P26387) -Attorney for Appellee
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 488244-1046

(517) 353-1798

_____/

APPELLANT'S APPLICATION FOR LEAVE TO APPEAL.

Appellant respectfully ask the Honorable Court for leave to appeal the Court of Appeals Order of June 16, 2008.

Respectfully, the June 16, 2008 Panel Order of the Court of Appeals mistakes the issue of facts, evidence and law of appellant's case before the Court that appellant believes could not be supported by the whole court below en banc and/or by this Honorable Supreme Court.

See Plaintiff-appellant's application for Leave to appeal and motion for en banc reconsideration before the Court of Appeals

I.

QUESTION FOR REVIEW.

MCR 2.003 (C) (3) states as follows:

Ruling. "The challenged judge shall decide the motion. If the challenged judge denies the motion,

(a) in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo.

QUESTION:

SHOULD HONORABLE MANDERFIELD HAVE COMPLIED WITH COURT RULE MCR 2.003 REQUIREMENTS AND BE DISQUALIFIED AND/OR SHOULD SHE HAVE RECUSED HERSELF FROM HEARING APPELLANT'S INDEPENDENT ORIGINAL ACTION COMPLAINT AS FILED ON DECEMBER 4, 2006 BEFORE ACTING ON CASE AND ISSUING HER ORDER OF MAY 30, 2007 AS ENTERED ON JUNE 20, 2007 SINCE APPELLANT FILED AN MCR 2.003 (C)(3)(a) MOTION TO

DISQUALIFY JUDGE AND/OR FOR JUDGE TO RECUSE HERSELF FROM HEARING COMPLAINT ON DECEMBER 4, 2006 BECAUSE OF ALLEGED PERSONAL BIAS, PREJUDGMENT OF CASE, PREJUDICE, AND RETALIATING AGAINST APPELLANT BY THE JUDGE.

APPELLANT ANSWERS YES, YES.
DEFENSE COUNSEL HAS NOT ANSWERED
THE COURT OF APPEALS DID NOT ANSWER
THE CIRCUIT COURT DID NOT ANSWER.

II.

APPENDIX F.

STATE OF MICHIGAN

SUPREME COURT

Supreme Court
File No. 136999
Court of Appeals
File No. 281651

Case No. 06-1536-NZ

Hon. Paula Manderfield

'SHOLA ABE,
Plaintiff-Appellant,
v
MICHIGAN STATE UNIVERSITY
Defendant-Appellee.
_____/

Babashola Abe -Pro Se
Plaintiff / Appellant
3111-2C Trapper's Cove Trail
Lansing, Michigan 48910
(517) 394 - 1605

RECEIVED
AUG 18, 2008
CORBIN DAVIS
CLERK
SUPREME COURT.

Michael J. Kiley(P26387)
Attorney for Defendant
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798
_____/

APPELLANT'S SECOND ADDENDUM TO APPLICATION FOR LEAVE TO APPEAL.

Additional reasons for Honorable Manderfield's conducts regarding appellant's case and why she

refused to comply with court rule MCR 2.003 that just came to appellant's attention are:

1. Honorable Manderfield's husband is an employee of the defendant. From defendant is where he earns his income as part of Honorable Manderfield's household wealth.

2. Honorable Manderfield's husband is a Ph.D. and/or doctorate student at one of defendant's schools, Department of Plant Pathology.

See appended, title of Thesis / Acknowledgment by Mr. (Dr.) David Murphy Gilstrap. See last paragraph on **page vi.**

Defendant represents a substantial part of Honorable Manderfield's political constituency and do not want to offend that political base by any judicial actions so that her husband can accomplish his academic and career goals without any possible arbitrary and/or

political impediments from defendant and/or defendant's school, and so further grow the wealth of, and secure the professional, financial and political future of the Manderfield's family for generations to come. See **MCR 2.003 (B).** See Motion to disqualify Honorable Manderfield on record, pages 1-12.

Honorable Manderfield has been protecting defendant / defense Counsel in order to protect her own and family's interests.

Respectfully, appellant would like to remind the Honorable Court that defendant / Counsel did not deny appellant's allegation in an original independent action, that Counsel used knowing fraud, intentionally misrepresented material facts and law to the Court, knowingly used false and res judicata barred claim / evidence to secure the October 11, 2000, May 26, 2004, and February 8, 2006 court orders in the **prior** case

docket # 96-82140-NZ between the two parties. Appellant respectfully ask the Honorable Court to accept appellant's allegations as true and relief him of these orders as well for defendant's failure to deny. See MCR 2.111(E).

Respectfully Submitted

Sig/ 'Shola Abe, Appellant
Dated: August 18, 2008.

PROOF OF SERVICE.

This is to certify that appellant served upon defendant / defendant's Counsel a copy of the above second addendum to his application for leave to appeal at defendant's address above by United States first class mail.

Sig/ 'Shola Abe, Appellant
Dated: August 18, 2008.

APPENDIX F contd.

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The thesis entitled

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COURT.

STRATEGIES FOR THE MANAGEMENT OF FUNGICIDE-RESISTANT RUTSTROEMA FLOCCOMSUM (SYN. SCLEROTINA HOMOEOCARPA), THE CAUSAL ORGANISM OF DOLLAR SPOT

Presented by

DAVID MURPHY GILSTRAP

has been accepted towards fulfillment
Of the requirement for the
DOCTOR OF degree in PLANT PATHOLOGY

Sig/ J. M. Vargas, Jr.

Major Professors Signature
5/ 12 / 05

Date

MSU is an Affirmative Action/Equal Opportunity Institution.

ACKNOWLEDGMENTS

Over the twelve years it has taken to complete my terminal degree, I have received substantial assistance, support, and encouragement from numerous individuals.

First and foremost, I thank Dr. Joe Vargas, Jr., for being my major professor and mentor. I appreciate the advice and patience of the rest of my committee: Drs Larry Olsen, Mary Hausbeck, Willie Kirk, and especially Ray Hammerschmidt whose timely and detailed editing played a key role in the completion of this thesis. Winfred Motherwell served as an additional proofreader. Drs. Sasha Kravchenko and Oliver Schabenberger provided crucial assistance with

my statistical analysis.

I thank Michael Jones for graciously providing research sites and taking data at the Lochmoor Club. Substantial assistance and advice was given by the research technicians in the Vargas lab: Nancy Dykema, Ron Detweiler, and Danielle McMahon. Drs. Rob Golembiewski, Jon Powell, Brandon Horvarth, and Phil Dwyer helped me to better understand plant pathology while they were fellow graduate students. Mark Collins at the turf center was invaluable. Two student workers who helped me out significantly were Greg Elliot and Trevor Thorp.

v

The chairperson of the Department of Crop and Soil Sciences **where I am employed** have given me their full support for this endeavor: Drs. Eldor Paul, Boyd Ellis, Taylor Johnston, Doug Buhler, and Kim

Kells. Fellow turf faculty who did the same were Drs. Paul Rieke, Bruce Branham, Jim Crum, and Trey Rogers. Other CSS faculty who inspired me were Drs. Bernie Knezek, Russ Freed, Karen Renner, and Larry Copeland. Within the college I received particular encouragement from Drs. Fred Piston, Ian Gray, Cliff Jump, Eunice Foster, Rick Brandenburg, Bridget Behe, Bob Schutzki and Weijun Zhao. Office professionals who were always helpful included Donna Ellis, Kathy Bedford, Linda Colon, Joan Gilliland, Carol Fosburg, Beverly Riedinger, and Darlene Johnson.

Timely encouragement, advice, and a fellowship were provided by Harrriet and Dr. Jim Beard, my major professor for my M.S. at Texas A&M. Others who heartened me along the way included Jim Epolito, Dan Taylor, Mel Lanford, Jim Weigel, and Dr. Terry Warren. **During this ordeal I have enjoyed the**

support and encouragement of my lovely wife, the Honorable Paula Manderfield; and my children: Madeline, Harrison, Katherine, and Rudy. My parent, Bette and Chena Gilstrap, and my two brothers, Frank and Randy, believed in me, as well.

vi

APPELLANT'S THIRD ADDENDUM TO HIS APPLICATION FOR LEAVE TO APPEAL.

Respectfully, as the Honorable Commissioner(s) prepares and presents this case to the Honorable Court and the individual justices, appellant would respectfully like to remind the Honorable Court that the case before the Honorable Court is of:

1. That the Circuit Court's **failed to comply** with Court recusal rule **MCR 2.003** before hearing docket # 06-1536-NZ. Compliance with Court rule precedes

hearing of independent action.

2. Secondarily, Docket # 06-1536-NZ **is an original independent action.** Defendant **failed to DENY** allegations that defendant / defense Counsel used knowing FRAUD, intentionally misrepresented material facts and law to the Court, knowingly used res judicata barred claim / evidence to secure Court orders of October 11, 2000, May 26, 2004, February 8, 2006 in the PRIOR case between the two parties and affecting the subsequent orders based on those fraudulently secured orders in a chronology of intentional deceit and misconduct by Counsel. See **MCR 2.112** (B)(E)(F). Defendant waived allegations in favor of appellant. MCR 2.111(E).

3. Even though the Court below should not have acted on case of fraud before complying with the MCR 2.003 recusal rule, it did without compliance with rule.

Then it **did not fulfil its judicial duty** to decide appellant's motion for reconsideration that follows that non compliance decision, even after two reminders from appellant to the Honorable Court to respectfully decide motion. See Statement of Facts, page 2 of appellant's Application for leave to appeal before the Honorable Court.

4. Respectfully, the Court of Appeals Order(s) regarding this case was/is clearly erroneous.

See enclosures.

Since the Honorable Court is a Court of **Truth and Justice**, appellant has presented the truth to the Court. **The truths above are uncontroverted by defendant / Counsel.** Appellant respectfully ask the Honorable Court to provide justice that flows from the truth above. Appellant respectfully move and urge the Honorable Court to exercise its extraordinary

powers to provide justice in favor of truths as shown above in this case.

Respectfully Submitted

Sig/'Shola Abe, appellant
Dated: August 22, 2008.

PROOF OF SERVICE.

Appellant hereby certify that he served a copy of the above addendum upon the defendant / defense Counsel Mr. Kiley as addressed above by United States first class mail.

Respectfully Submitted

'Shola Abe, appellant
Dated: August 22, 2008.

APPENDIX G

Court of Appeals, State of Michigan

ORDER

Kristen Frank Kelly

Presiding Judge

People of MI v Kwame Kilpartrick

Docket No. 285794

Kurtis T. Wilder

LC No. 08-111273-AS

Kristopher M. Murray

On June 6, 2008, this Court held in abeyance the People's application for leave to appeal and directed defendants to file answers to the prosecution's application within ten days. The Court now removes the application from abeyance, and further orders that the application for leave to appeal is DENIED.

In the application for leave to appeal, the people seek to recuse, and therefore preclude, all judges of the 36th District Court bench from conducting the preliminary exam in this case. Importantly, the people's application does not seek the recusal of only

one particular assigned judge. See MCR 2.003(B). Historically, the Michigan Supreme Court has recognized that every judge is granted a strong presumption "of fairness, and integrity, and heavy indeed is the burden assumed in this court by the litigant who would seek to impeach the presumption [of impartiality] so simply justified through the years." *Mahlen Land Corp v Kurtz,* 355 Mich 340, 350-351; 94 NW 2d 888 (1959). See also, *Aetna Life Ins Co v Lavole,* 475 US 813, 820; 1006 S Ct 1580; 89 LED2d 823 (1986) (where the United States Supreme Court also noted this presumption, and recognized that a judge "is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea"). The people acknowledge this longstanding principle of law, and concede in their application that there is no judge of the 36 th District

Court that has an actual bias mandating recusal under MCR 2.003(B). Rather, the people seek recusal of the entire 36th District Court, asserting as the basis for recusal of the entire bench that such action would purportedly allow this case to avoid "even the possibility of public concern over the impartiality of the forum," citing *Wayne Co Board of Comm'rs v Wayne Circuit Judges*, 403 Mich 860 (1978) and *Special Wayne Prosecutor v Recorder's Court Judges*, 409 Mich 1119 (1980).

As we noted more 20 years ago, however, neither *Wayne Co Board of Comm'rs v Wayne Circuit Judge* nor *Special Wayne Prosecutor v Recorder's Court Judges* provide any analysis of the facts or articulation of the factors relied upon by the Michigan Supreme Court when it concluded that recusal of the entire bench in those particular cases was warranted.

In re Hirsch, 116 Mich App 233, 242; 323 NW2D 349 (1982). As such, these cases are neither binding precedent nor persuasive authority as applied in the instant case. *In re Hirsch, supra; Dykes v William Beaumont Hosp,* 246 Mich App 471, 483; 633 NW2d 440 (2001). In addition, because the appearance of impropriety language derives from federal statues which, under federal law, "afford more protection to parties than does the constitution," the situation under Michigan law where the "appearance of impropriety" standard could even arguably apply require a showing "so strong as to arise to the level of a due process violation." *Cain v Dep't of Corrections,* 451 Mich 470, 512 n 48; 548 NW2d 210 (1996). The People do not assert a due process violation in this case.

We conclude, therefore, that MCR 2.003(B) and

not the appearance of impropriety standard applies to the requested recusal in this case because "where there are specific court rules... that pertains to a subject, such as a judicial disqualification, " the specific court rule is to be applied and not "[t]he more general "appearance of impropriety " standard ." *In re Haley*, 476 Mich 180, 194; 720 NW2d 246 (2006). See, also *Addair v Dep't of Education*, 474 Mich 1027, 1038 n12; 709 NW2d 5677 (2006), noting that "[u]nlike the disqualification rules of some states, there is no "appearance of impropriety" language contained in MCR 2.003(B), doubtless because its drafters were concerned about such language vitiating the specific provisions set forth in the rule."

Applying MCR 2.003(B)(1)-(6) and relevant case law to the particulars asserted by the People,

disqualification of the 36th District Court bench is not required. First, the fact that Judge Carter or other Judge of the 36th District Court bench may be called as a witness during the preliminary examination does not require recusal, **as MCR 2.003(B)(6) requires the recusal of a judge only when "the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person... is to the judge's knowledge likely to be a material witness in the proceeding."** None of the judges who are proposed to be witnesses fall within this rule. Additionally, that the judges of the 36th District Court may have relationships with witnesses beyond those prescribed in the court rule does not warrant recusal, in absence of a showing of **bias** (and none is alleged), because the role of the judge in a preliminary exam in not to gauge

guilt or innocence, and generally does not require making credibility determinations. *People v Doss,* 406 Mich 90, 103; 276 NW2d 9(1979) (when evidence at the exam conflicts, judge need to decide credibility, as defendant should be bound over for Circuit Court jury to resolve conflict in evidence); People v Greenberg, 176 Mich App 296, 307; 4439 NW2d 336 (1989) ("if [witnesses] testimony was subject to attack as unworthy of belief, that is a question for the jury at trial and does not undermine a decision to bind over."). We also previously held that recusal of a particular judge or the entire bench is not warranted where the assigned jurist would have to make credibility determination concerning a judicial colleague's immediate family member, *People v Prast, 114 Mich App* 469, 481; 319 NW 2d 627 (1982), while other courts have held that recusal is not warranted when a

judicial colleague is a witness. See *Mungin v State,* 932 So 2d.986, 994 (Fla, 2006) ("there is no specific requirement that a trial judge recuse himself or herself simply because a fellow judge in the circuit is to serve as a witness."), and *Meyer v Foti*, 720 F Supp 1234, 1238 n5 (ED La, 1989).

The notion that courts, aw a whole, must recuse themselves when a party - such as a member of Congress - has a voice in the court's budget, has likewise been rejected as unsound even under an appearance of impropriety standard, *US v Poludniak*, 657 f2d 948, 954 (CA 8, 1981), and the People's assertion that defendant Kilpatrick's involvement in the budget process for the court requires recusal of the entire bench fails under the law. Additionally, that defendant Kilpatrick, as a political figure, has professional or social interactions with the members of

the 36th District Court bench is only the natural result of our elective process for judges, see *Republican Party of Minnesota v White*, 536 US 765, 788-792; 122 S Ct 2528; 153 L Ed2d 694 (2005) (O'Connor, J., concurring). We also note that none of the alleged political considerations argued by the People as support for the recusal request pertain to defendant Beaty, and that the People's concerns expressed specifically about Judges Giles, Carter, Bryant-Weeks, Bright and Miller are not relevant to a consideration of removing the entire bench, but instead would pertain to an evaluation as to whether it was appropriate for those individual judges to be recused.

Finally, the apparently unwritten practice of the 36th District Court to recuse the entire bench under certain circumstances is simply not enforceable

as applied in this case. This "practice" is not embodied in a local court rule or formal written policy approved by the State Court Administrator, and it was not part of an order in this case. See People v Davie, 225 Mich App 592, 600; 571 NW2d 229 (1997). Thus, we are left to apply the court rule and cases that are applicable to the particular allegations made by the People.

Sig/_____
Judge

COURT OF APPEALS OF THE STATE OF MICHIGAN

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on JUL 02 2008

Sig/ Sandra Schultz Mengel

Chief Clerk

APPENDIX H.

STATE OF MICHIGAN
IN THE INGHAM CIRCUIT COURT

Chief Clerk of the Court
Ingham County Circuit Court CASE
30th Judicial Circuit NO.
06-1536-NZ
P. O. Box 40771 HON. PAULA MANDERFIELD
313 W. Kalamazoo Street
Lansing, MI 48901-7971

Dear **Ms. Kay Taylor,** Chief Clerk of the Court:

This is again to make you aware of these facts regarding case No 06-1536-NZ.

Defense Counsel secured the Court's Order entered on June 20, 2007 **without** the Court acting on plaintiff's motion to disqualify Judge Manderfield, or for Judge Manderfield to recuse herself from hearing plaintiff's case because of the reasons plaintiff stated in his motion brief to disqualify Judge Manderfield. **Plaintiff asked the Court to hear motion without**

a formal hearing, that is, without a formal appearance. For the Court to rely on the content of plaintiff's motion brief in deciding that motion. *See appended, the January 4, 2007 addendum to plaintiff's motion requesting that motion be heard without a formal hearing.* The reason for this was/is, Judge Manderfield told plaintiff **not to come back to her Court again.** See appended transcript of oral argument of February 8, 2006, page 8, line 24-25, the Court **telling plaintiff not to come back to her Court again,** and that plaintiff should not go to the Court of Appeals. Therefore, motion hearing was not scheduled and plaintiff asked and expected the Court to act on motion and then notify both parties of the disposition of that motion.

The above facts were known to both Counsel and the Judge, but knowingly disregarded by both.

The Judge should have acted on the motion, but she refused to act on motion. By Judge Manderfield's own directive to plaintiff not to come back to her court, **not scheduling a motion hearing by plaintiff under this circumstance was not and not a legitimate reason for Judge Manderfield not to act on motion to recuse herself** or for the Court to disqualify her from hearing plaintiff's case. The Judge's refusal to act on the motion is more to her personal bias against plaintiff.

After that Order of June 20, 2007, I submitted a timely motion for reconsideration. See appended, a copy of my second reminder to the Judge to act on the motion to reconsider. **To date, the Judge has refused to act on motion,** further delaying case, further harming plaintiff, in a collaborative conduct by defendant/Counsel and the Court.

This collaboration have been used by both the Court and Counsel, to fraudulently block review of two of my **appeals of right** in the Court of Appeals in the prior case between the two parties, with help from within the Court of Appeals. See statements by the judge in the transcript of oral argument of February 8, 2006, page 8, line 24-25. See page 9, line 1-3, an incorrect statement by the Court. On May 12, 2004, Judge Manderfield told plaintiff not to appeal her order, and threatened plaintiff with sanction in the hands of the Court of Appeals if plaintiff were to appeal her order of that date. See in the Court's record, transcript of oral argument of May 12, 2004, page 7, lines 15-25, page 8. As it appears now again **in the conduct of this case,** both the Judge and defense Counsel in their collaboration, are working on similar schemes to derail my appeals of right in this case as they have done in

the past.

Counsel secured the Orders he secured in the prior case between the two parties with KNOWING FRAUD, INTENTIONAL MISREPRESENTATION OF MATERIAL FACTS, AND KNOWINGLY USED FALSE EVIDENCE in securing those orders.

Judge Manderfield presided over and granted the Orders of May 26, 2004 and February 8, 2006 as fraudulently secured by Counsel, with knowledge of Counsel's fraudulent conducts. Counsel again in his December 8, 2006 response to plaintiff's December 4, 2006 complaint, fraudulently claimed that appellate Court has upheld the issues in plaintiff's complaint. Then true to his modus operandi of knowing fraud, he rammed an absurd presentment of order **with no basis in material fact, evidence and/or law** through the Court and came out with a Court's

Order by Judge Manderfield as entered on June 20, 2007. **That Order had no and has no basis in material fact, evidence and/or law.** *Now Judge Manderfield would* ***not*** *act on plaintiff's motion to reconsider her ruling and Order as entered on June 20, 2007.* See appended, a copy of my second reminder to Judge Manderfield to act on the motion to reconsider. This is another example of the fact that, not only that the Court has not been interested in stopping Counsel's fraudulent conducts, it aids and abets him in such conducts, covering up for defendant / Counsel's conducts with orders that have no basis in fact, evidence and/or law.

Respectfully, for the progress of the case cited above, it would be helpful, if **the Court would remind Honorable Manderfield to act on plaintiff's timely motion to reconsider**, EITHER

TO GRANT OR DENY THAT MOTION.

Respectfully, plaintiff is informing you of this kind of conducts by both the defense Counsel and the Judge to make you aware of what is happening within the Court, at least regarding this case. This is a serious issue, not only for this case, but also for other cases that may entail conducts similar to this one that I am informing you about.

Thank you for your attention to this matter.

Sincerely,

Sig/_____
Dated: September 6, 2007.
'Shola Abe, Plaintiff
cc: Case file.

Proof of Service.

Plaintiff hereby affirm that he served a copy of this letter to the Chief Clerk of the Court on Defendant / Counsel, Mr. Michael Kiley at Michigan State

University, 494 Administrative Building, East Lansing, MI 48824-1046.

Sincerely,
Sig/
Dated: September 6, 2007.
'Shola Abe, Plaintiff.